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MEETING

STATE OF CALIFORNIA

INTEGRATED WASTE MANAGEMENT BOARD

PERMITTING AND COMPLIANCE COMMITTEE

JOE SERNA, JR., CALEPA BUILDING

1001 I STREET

2ND FLOOR

COASTAL HEARING ROOM

SACRAMENTO, CALIFORNIA

MONDAY, DECEMBER 3, 2007

9:36 A.M.

KATHRYN S. SWANK, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 13061

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMITTEE MEMBERS

Ms. Rosalie Mulé, Chairperson

Mr. Jeffrey Danzinger

Ms. Cheryl Peace

BOARD MEMBERS

Ms. Margo Brown, Chairperson

Mr. Wesley Chesbro

Mr. Gary Peterson

STAFF

Mr. Elliot Block, Chief Counsel

Mr. Mark Leary, Executive Director

Ms. Julie Nauman, Chief Deputy Director

Mr. Mark de Bie, Chief, Permitting and LEA Support
Division

Mr. Mustafe Botan

Mr. Richard Castle

Ms. Birgetta Corsello

Ms. Betty Fernandez

Mr. Robert Holmes

Mr. Howard Levenson, Program Director, Sustainability
Program

Ms. Joy Luther

APPEARANCES CONTINUED

Ms. Mary Madison-Johnson

Mr. Bill Orr, Chief, Cleanup, Closure and Financial
Assurance Division

Mr. Ted Rauh, Director, Waste Mitigation & Compliance
Program

Mr. Carla Repucci

Mr. Ken Stuart, Contract Personnel

Mr. Scott Walker, Manager, Cleanup Branch

Mr. Erica Weber

ALSO PRESENT

Mr. Glenn Acosta

Mr. Martin Aiyetiwa

Mr. Paul Bailey, ICF International

Mr. Paul Dickinson, Keep California Beautiful

Ms. Nancy Ewert, Kern County Waste Management Department

Mr. Gary Harris, Ca. Assoc. of Code Enforcement Officers

Mr. Phil Hoffman, City of Antioch

Mr. Nick Lapis, Californians Against Waste

Mr. George Larson, American Chemistry Council

Mr. Terry LeVeille, TL Associates, California Tire Assoc.

Mr. Bill Magavern, Sierra Club of California

Mr. Bill Mannel, Butte County

Mr. Michael Mohajer, Los Angeles County Integrated Waste
Management Task Force

APPEARANCES CONTINUED

Ms. Rachel Oster, NorCal Waste Systems

Mr. Ed Padilla, Solano County LEA

Mr. Greg Pryor, NorCal Hay Road Landfill

Mr. Lory Rising, L.A. County Sanitation Districts

Mr. George Savage, Cal Recovery

Mr. Terry Schmidtbauer, Solano County LEA

Mr. Ricardo Serrano, Solano County LEA

Mr. Larry Sweetser, Environmental Services and
Joint Powers Authority

Mr. Chuck White, Waste Management

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 PROCEEDINGS

2 CHAIRPERSON MULÉ: Good morning, everyone.

3 Welcome to the December meeting of the Permitting
4 and Compliance Committee. We have agendas on the back
5 table and if anyone would like to speak to an item, please
6 fill out a speaker slip form, bring it up to Donnell here,
7 and you will have an opportunity to address our committee.
8 Also, I would like to ask everyone to please either turn
9 off or put in silent mode your cell phones and pagers.
10 And with that, Donnell, would you please call the roll.

11 EXECUTIVE ASSISTANT DUCLO: Members Danzinger?

12 MEMBER DANZINGER: Here.

13 EXECUTIVE ASSISTANT DUCLO: Peace?

14 MEMBER PEACE: Here.

15 EXECUTIVE ASSISTANT DUCLO: Chair Mulé?

16 CHAIRPERSON MULÉ: Aye. Here.

17 Any ex partes?

18 MEMBER PEACE: Up to date.

19 MEMBER DANZINGER: Up to date.

20 CHAIRPERSON MULÉ: Okay. Very good.

21 Let's move forward to the Program Director's
22 report. First we'll here from Ted Rauh. Good morning.

23 PROGRAM DIRECTOR RAUH: Thank you, Chair.

24 Madam Chair, Ted Rauh with the Waste Compliance
25 Program. I just -- because of the busy agenda, I have a

1 very brief report for you. I would like to quickly
2 provide a little update on the Board's response, staff's
3 response, of the Southern California fires. And we have
4 over ten staff who are engaged in either part-time or
5 full-time, in support of the jurisdictions that are
6 dealing with debris cleanup in Southern California, ably
7 led by Scott Walker, Tabetha Willmon, and Wes Minderman.

8 We've got staff in the fields supporting the City
9 of San Diego as well as staff here in headquarters and
10 continue to coordinate meetings with all of the interested
11 parties including the waste management industry as well.

12 In terms of a quick update, the City of San Diego
13 has two contractors in place. I would like to say that
14 all of the household hazardous waste has been removed from
15 all of the damaged homes in all of the jurisdictions
16 affected by the fire. As we move to debris, the City of
17 San Diego is in the lead in terms of carrying out the
18 integrated approach that we've been recommending. They
19 do, as I said, have two contractors in place. Over 150 --
20 rather, 120 homeowners have signed up for their program,
21 and they continue to work with those who have not signed.
22 Contractors are in the field, and somewhere in the
23 neighborhood of 15 to 20 homes are currently nearly
24 complete of debris removal. They continue to expect to
25 complete the work by 12/31.

1 The County of San Diego has 400 homeowners who
2 have signed up for their program. They have a contractor
3 in place, over a hundred homes assessed, and actually have
4 begun debris removal, started last week. And they are
5 picking up steam as we move forward. Unfortunately, with
6 the heavy rains experienced in San Diego county, they are
7 also having to deal with a certain amount of debris flow
8 as a result of debris clogging some of the minor
9 tributaries and streams. But they are on top of that.

10 The City of Escondido is also using a program
11 similar to that recommended by the Board. They have
12 completed cleanup of 167 residences, have 19 left to
13 finish, and fully expect to complete that work this month
14 as well.

15 The County of San Bernardino has just begun its
16 program of signing up residents. They have over 50 signed
17 up for their program. They are moving asbestos as we
18 speak and will begin their debris removal mid part of
19 December and expect to be completed hopefully by the end
20 of January or early February.

21 So all in all, things are moving forward. We are
22 continuing to work with the insurance industry to improve
23 the flow of communication between the insurance companies
24 themselves and these debris removal programs. And as a
25 whole, I think the program is working well and we're

1 pleased to be a part of it.

2 That concludes my report.

3 CHAIRPERSON MULÉ: Thank you, Ted. And again, I
4 just want to extend my thanks and gratitude to our staff
5 who's working on this project, both in the field or here
6 in Sacramento.

7 Any questions for Ted? No?

8 With that, Howard, do you have a report? Not
9 today?

10 Okay. Then let's move into our agenda. We do
11 have a lengthy agenda today. Items 9 and 10 have been
12 moved from the committee and will be heard at the full
13 Board meeting next Tuesday, September 11th.

14 And what we're going -- what we're planning on
15 doing is trying to get through as much of the agenda as we
16 can today, perhaps break for lunch, maybe 30, 40 minutes,
17 around noon, and then finish the remainder of the agenda.

18 So with that, let's go to Committee Item B, Board
19 agenda Item 1.

20 Howard?

21 PROGRAM DIRECTOR LEVENSON: Thank you, Madam
22 Chair. Good Morning, Board Members. Howard Levenson,
23 director of the Sustainability Program.

24 We have one agenda item from the program,
25 Consideration of the Amended Countywide Siting Element for

1 Alameda County. And I want to thank you, Madam Chair, and
2 Mr. Rauh for letting us go first before all the other
3 items.

4 I'm going to turn it over to Betty Fernandez,
5 who's going to make the presentation on this.

6 MS. FERNANDEZ: Good morning, Chair Mulé,
7 Committee Members Peace, Danzinger, and Chesbro.

8 The County has -- the County of Alameda has
9 integrated the -- I'm sorry. Let me start over. Alameda
10 County has amended its countywide siting element to revise
11 the description of the Aladdin Avenue transfer station
12 located in the city of San Leandro. The county integrated
13 the nondisposal facility descriptions within its
14 countywide siting element in an effort to keep this
15 document current as possible and determined that an
16 amendment is necessary.

17 This amendment description updates the Aladdin
18 Avenue transfer station information to reflect the permit
19 revisions for which the Board concurred with at the
20 July 2007 Board meeting.

21 The County has submitted all the required
22 documentation for this amendment and staff therefore
23 recommends approval of this item.

24 Debora Kaufman, who's the senior program manager
25 for the Alameda County Waste Management Authority,

1 otherwise known as stopwaste.org, is here to address
2 questions from the Board.

3 And this concludes my presentation. Thank you.

4 CHAIRPERSON MULÉ: Thank you, Betty.

5 Do we have any questions for staff or for the
6 applicant on this one? Board Member Peace?

7 MEMBER PEACE: I have some questions for staff. I
8 don't remember ever seeing this before. Is this something
9 that's required by the Board? Or is this something that
10 they wanted to do?

11 PROGRAM DIRECTOR LEVENSON: Ms. Peace, I think
12 we'll turn to our legal counsel for a response on that.

13 CHIEF COUNSEL BLOCK: Sure.

14 And the county may want to elaborate on this as
15 well, but this is not required by the Board. Transfer
16 stations would normally go in the nondisposal facility
17 element rather than the countywide siting element. But
18 there is nothing that prohibits a jurisdiction from
19 putting more in their document if they desire, for
20 whatever reason.

21 So staff is bringing this forward and recommending
22 approval because they met the procedural requirements for
23 reviewing an amendment.

24 MEMBER PEACE: I think it's great. They want to
25 keep everything in order and up-to-date. I think that's

1 great.

2 I just wondered if, since it's not required by the
3 Board, it seems like it's something very minor. It may be
4 something we would like to consider, the Board would like
5 to consider, for the future. It's one of those things
6 that is delegated to the executive director and put that
7 like in the next update of the governance policies. Maybe
8 just put that in there.

9 MEMBER DANZINGER: I agree.

10 CHIEF COUNSEL BLOCK: Okay. We do have
11 scheduled -- it's a few months down the road from now.
12 We're going to be reviewing those with the Board. So I'm
13 starting to keep a list.

14 MEMBER PEACE: Good.

15 CHIEF COUNSEL BLOCK: So I'll add that to the
16 list.

17 CHAIRPERSON MULÉ: Good. I basically had a
18 very -- pretty much the same questions. Does this have to
19 come to the Board? And so I think the answer is no, it
20 doesn't necessarily have to come to the Board.

21 I do appreciate Alameda County's Solid Waste
22 Authority coming to us for concurrence. But again, what
23 we're trying to do is we're trying to be as efficient as
24 we can. And if it's something that is routine in nature,
25 we can delegate that to the executive director.

1 MEMBER PEACE: If we make it routine and they
2 don't have to come to the Board, it will encourage more
3 jurisdictions to keep their documents up-to-date.

4 CHAIRPERSON MULÉ: Okay. Any other questions,
5 comments?

6 Do I have a motion?

7 MEMBER PEACE: I would like to move Resolution
8 No. 2007-247.

9 MEMBER DANZINGER: Second.

10 CHAIRPERSON MULÉ: It was moved by Board Member
11 Peace, seconded by Member Danzinger.

12 Please call the roll.

13 EXECUTIVE ASSISTANT DUCLO: Member Danzinger?

14 MEMBER DANZINGER: Aye.

15 EXECUTIVE ASSISTANT DUCLO: Peace?

16 MEMBER PEACE: Aye.

17 EXECUTIVE ASSISTANT DUCLO: Chair Mulé?

18 CHAIRPERSON MULÉ: Aye.

19 Thank you. We'll put that one on consent.

20 And before we proceed, I would like to welcome
21 Board Member Chesbro. Good morning. Nice to see you.
22 Thank you for being here.

23 Let's move forward to Committee Item C, Board
24 Agenda Item 2.

25 Ted?

1 PROGRAM DIRECTOR RAUH: Yes. Thank you, Madam
2 Chair. Item C is Consideration of the Adoption of a
3 Negative Declaration and Consideration of a New Full Solid
4 Facility Permit for the A Plus Materials Recycling Center
5 in City of Stockton.

6 The Board acts as the lead agency for this
7 environmental document and also acts as the EA for the
8 City of Stockton. And here to present the item is Joy
9 Luther.

10 MS. LUTHER: Good morning, Madam Chair and Board
11 Members.

12 A Plus Materials Recycling has been in operations
13 since 2003 and serves the city of Stockton and its
14 surrounding areas. Currently, it runs a green and wood
15 material chipping and grinding operation as well as an
16 inert type A recycling operation both under EA
17 notification.

18 The proposed project would involve adding a
19 transfer processing area to the current activities. The
20 proposed new full solid waste facility permit would allow
21 for, one, all current operations to be combined under one
22 full solid waste permit to act as a transfer processing
23 center that could take up to 500 tons per day of mixed
24 solid waste in conjunction with the current maximum daily
25 tonnage of 1500 tons per day of inert type A waste and up

1 to 200 tons per day green materials for chipping and
2 grinding; two, a peak of 500 vehicles per day; and three,
3 hours of receipt of waste Monday through Sunday from
4 6:00 a.m. to 6:00 p.m. with the hours of operation Monday
5 through Sunday from 3:00 a.m. to 10:00 p.m.

6 The Board, acting EA for the City of Stockton and
7 as lead agency for the purposes of CEQA, prepared an
8 initial study negative declaration or ISND for the
9 proposed project.

10 A public meeting was held on September 18th, 2007,
11 to comply with Title 14, sections 21660.2 and 21660.3 and
12 to allow the public to comment on the negative
13 declaration.

14 The ISND was also circulated for 30 days to the
15 State Clearinghouse. Both actions did not result in any
16 comments.

17 Board staff have determined, based on the initial
18 study and negative declaration, that the proposed facility
19 will not have any significant environmental impacts. And
20 Board staff also determined that all requirements for the
21 proposed permit have been fulfilled.

22 Staff recommends that the Board adopt Board
23 Resolution 2007-239, adopting the initial study negative
24 declaration and approving the issuance of the solid waste
25 facility permit.

1 This concludes staff's presentation. Eric Horton,
2 the operator at A Plus Materials Recycling, and I would be
3 happy to answer any questions you may have.

4 CHAIRPERSON MULÉ: Thank you, Joy.

5 Do we have any questions for either Joy or Eric
6 who's here today? No?

7 Any questions?

8 We do have a question on the Resolution. Board
9 Member Peace.

10 MEMBER PEACE: Don't we -- when we usually have
11 these kinds of resolutions where we're approving the neg
12 dec, don't we usually have two resolutions, one for the
13 neg deck and one for the permit?

14 PROGRAM DIRECTOR RAUH: Yes, Member Peace, we
15 have traditionally had two. But in discussion with the
16 Legal Office, it's not a requirement to do so. The
17 resolution can be structured so that it deals with both
18 approvals simultaneously. And as -- the Paper Reduction
19 Act, we decided to go ahead and try it this time. And if
20 it met your approval, we would continue it that way.

21 CHAIRPERSON MULÉ: That works for me. How about
22 you, Board Member Peace?

23 MEMBER PEACE: That's fine with me. Did anybody
24 think of a reason why it used to be done the other way?
25 Is there a legal reason why it used to be split?

1 STAFF COUNSEL BLEDSOE: Michael Bledsoe, Legal
2 Office. Good morning.

3 There is no reason that it needs to be done in two
4 separate resolutions. Some jurisdictions -- some
5 government agencies prefer it that way; others don't.

6 CHAIRPERSON MULÉ: Okay. Thank you.

7 Do I have a motion then?

8 MEMBER PEACE: I would like to move Resolution
9 No. 2007-239 Revised.

10 MEMBER DANZINGER: Second.

11 CHAIRPERSON MULÉ: Moved by Member Peace, seconded
12 by Member Danzinger.

13 Call the roll, please.

14 EXECUTIVE ASSISTANT DUCLO: Danzinger?

15 MEMBER DANZINGER: Aye.

16 EXECUTIVE ASSISTANT DUCLO: Peace?

17 MEMBER PEACE: Aye.

18 EXECUTIVE ASSISTANT DUCLO: Chair Mulé?

19 CHAIRPERSON MULÉ: Aye.

20 You can put that one on consent as well.

21 Thank you all for being here. Thank you, Joy.

22 Our next item is Committee Item D, Board Agenda

23 Item 3.

24 Ted?

25 PROGRAM DIRECTOR RAUH: Thank you.

1 This item requests that the Board consider
2 concurrence on the Revised Full Solid Waste Facilities
3 Permit for the Nor Cal Waste Systems Hay Road Landfill in
4 Solano County.

5 This item was originally scheduled for discussion
6 under the Permitting and Compliance meeting on
7 September 10th, 2007, but was not heard, and it was
8 subsequently pulled. At that point, the staff had issues
9 with the application, both with respect to the handling of
10 ADC and also for financial assurance. Those issues have
11 been resolved, and here to make the presentation is Mary
12 Madison-Johnson.

13 CHAIRPERSON MULÉ: Good morning, Mary.

14 MS. MADISON-JOHNSON: Good morning, Madam Chair
15 and Members.

16 This existing facility is owned and operated by
17 Nor Cal Waste Systems Inc. and is located in Vacaville,
18 California.

19 The proposed permit is to the following:

20 Increase the final landfill elevation from 165
21 feet to 215 feet mean sea level, which will result in an
22 increase of the disposal capacity from 28,240,000 to
23 37,000,000 cubic yards and change the estimated closure
24 year from 2070 to 2077;

25 Will incorporate the receiving and storage of

1 source separated recyclable materials;

2 Will change operations to allow mixing and storage
3 of dried biosolids and soils for use as operations layer
4 materials and;

5 It will change operations to allow leachate
6 spraying for dust control.

7 At the time that the item was prepared, staff was
8 unable to provide a recommendation due to a pending
9 compliance with state minimum standards.

10 Since the item was prepared, the following have
11 taken place: On November 30, 2007, staff conducted a
12 pre-permit inspection with the LEA and found the facility
13 operations consistent with the applicable state minimum
14 standards.

15 Therefore, Staff recommends that the Board adopt
16 Solid Waste Facility permit decision number 2007-241,
17 concurring in the issuance of solid waste facility permit
18 number 48-AA-0002.

19 By the December Board meeting, staff will revise
20 the item and resolution to reflect that all the required
21 findings have been made and include staff's recommendation
22 for the Board to concur with the permit.

23 This concludes staff presentation.

24 Staff as well as the LEA and operator are present
25 to answer any questions.

1 CHAIRPERSON MULÉ: Thank you, Mary. So we don't
2 have the revised resolution today?

3 MS. MADISON-JOHNSON: The item and the revised
4 resolution are not with you today, but they will be with
5 you by the time of the Board meeting.

6 CHAIRPERSON MULÉ: And so from a legal
7 perspective, do we -- can we -- do we need to put it over
8 or can we vote on it today? We don't have a revised
9 resolution before us.

10 STAFF COUNSEL BLEDSOE: Sorry for the delay, Madam
11 Chair.

12 You have before you what we call a placeholder
13 resolution that has -- is it or is not -- the Board does
14 concur or Board objects. So we just need to strike out
15 the inappropriate language. If you want to proceed today,
16 you can.

17 CHAIRPERSON MULÉ: Okay. Because I think my
18 preference would be, let's proceed today and then if
19 there's any issues we can pull the item at the full Board
20 meeting. Okay. Let's do that.

21 Questions for either staff or the applicant?

22 MEMBER PEACE: Oh, yeah. You know me. I have
23 lots of questions on this one. So if anybody wants to go
24 first, that's fine, because I got lots of them.

25 MEMBER DANZINGER: Go ahead.

1 CHAIRPERSON MULÉ: Go right ahead.

2 MEMBER PEACE: One, here in 2007, it says six
3 state minimum standards violations. And here, they are
4 trying to get a revision and they have state minimum
5 standards violations. You'd think they would be on their
6 best behavior if they are trying to get a revision. And,
7 yeah, just look at 2004, this is like one of the worst
8 ones I've ever seen in terms of compliance. So that is
9 really bothering me.

10 Let me just go through this. And where you are
11 talking about the remaining capacity, it's like increasing
12 by 30 percent. Is that all due to the height increase, or
13 is any of that due to the Board's new way of calculating,
14 doing the calculation method?

15 MS. MADISON-JOHNSON: Member Peace, I think the
16 best would be to ask the LEA or the operator to come up
17 and respond to your questions. So Ed Padilla with the
18 LEA's is present, and I understand he was going to take
19 first crack at your questions.

20 CHAIRPERSON MULÉ: And if you want to come up,
21 maybe what we could do is respond to each of these
22 questions as they are raised. And then also I would just
23 like to have the applicant be ready to come up and further
24 clarify any information we may request.

25 Thank you. Good morning. State your name.

1 MR. PADILLA: Good morning, Board Members. I'm Ed
2 Padilla from Solano County, LEA.

3 And I am here to answer any questions.

4 MEMBER PEACE: First one. On the increase, the
5 main capacity in increases 30 percent, is that 30 percent
6 all due to the height increase or is any of that due to
7 the Board's new calculation method?

8 MR. PADILLA: No, that's due to the new height
9 increase.

10 MEMBER PEACE: That's all due to the height
11 increase? Okay.

12 So this landfill has been operating since 1964, so
13 it's an unlined landfill; is that correct?

14 MR. PADILLA: Yes.

15 MEMBER PEACE: So I mean, are they going up so
16 they don't have to open a new cell and line a new cell;
17 they just keep going up?

18 MR. PADILLA: No, they are just going up.

19 MEMBER PEACE: Yeah. And why do they keep going
20 up? It seems like they have a lot of acreage because they
21 don't want to have to design a new cell and line a new
22 cell. They just keep going up.

23 MR. PADILLA: Well, the reason why they went up
24 and requested it while they did it the EIR, they wanted
25 the landfill to reach its capacity and they expanded it.

1 MEMBER PEACE: Well, that didn't really answer my
2 question.

3 Do they have enough property to design a new cell
4 and line a new cell? Do they have enough property?

5 MR. SERRANO: Good morning. This is Ricardo
6 Serrano with Solano county LEA.

7 To answer you question, yes, the facilities permit
8 for the total footprint is 640 acres. Out of that, only
9 256 are permitted for disposal. Going back to the
10 question about the liners, there's only one cell, DM1 that
11 isn't lined. It is used for disposal of inerts, asbestos,
12 concrete, and so forth. This is a Class 2 landfill, which
13 all is in Title D, regular requirements.

14 MEMBER DANZINGER: So everything under our purview
15 is lined?

16 MR. SERRANO: That's correct.

17 MEMBER PEACE: Okay. The other questions I have,
18 under the key issues, the change in operation is to allow
19 mixing and storage of up to five years of dry sewage
20 sludge. I mean, why five years? That seems like an awful
21 lot.

22 MR. SERRANO: Currently, this facility holds two
23 full permitted -- two full permits, one for the
24 composting, the other one for the regular landfill.

25 A portion of the landfill has been used for the

1 composting footprint to allow for the composting
2 operations. And a portion of the composting footprint has
3 been allocated for the mixing and storage of biosolids
4 with soil to create a soil-like-type of material. So
5 that's what we use for the foundation of the landfill. So
6 it's just a portion in a five-year term that's going to be
7 used for this particular purpose from the composting
8 facility. There are two -- it is a complete footprint
9 that's separated by either the composting footprint or the
10 landfill footprint.

11 MEMBER PEACE: Still, it sounds like an awful lot.
12 I've never seen that before where you're going to allow
13 five years of storage for dry sewage sludge.

14 Is there any kind of a ton limit or cubic yard
15 limit or something that goes along with that? Or how do
16 they determine if they have five years' worth?

17 MR. SERRANO: This facility has a cell, DM9, used
18 for the holding in the wintertime of biosolids, which is
19 dry on the land treatment unit from April through October.
20 The drying time is just from April through October. And
21 the footprint of the landfill has been somehow decreased
22 by 3.4 acres; is that correct?

23 So they are just borrowing space from one facility
24 to another one to allow for this operation for the mixing
25 of these biosolids, the dry biosolids with soils.

1 MEMBER PEACE: I guess, just in my mind, I think
2 storage of up to five years of dry sewage sludge just
3 doesn't --

4 MEMBER DANZINGER: You, you know, maybe that's
5 just a high end. Can the operator speak to, you know, how
6 long do they expect to be storing it? I mean, are you
7 going to use that max, or is there going to be a matter of
8 routine practice that's going to be much less than that?

9 CHAIRPERSON MULÉ: State your name, please.

10 MS. OSTER: This is Rachel Oster with Nor Cal
11 Waste Systems. Hay Road is a soil poor site, so instead
12 of excavating, this is what we do for foundation layers
13 and also for additional daily cover instead of excavating.

14 CHAIRPERSON MULÉ: But to answer Board Member
15 Peace's question, she's concerned about storing five --
16 the sewage sludge for five years. Can you address that?
17 Is that a maximum or --

18 MS. OSTER: It is a maximum.

19 MEMBER DANZINGER: Is this something that you all
20 have been doing?

21 MS. OSTER: Umm-hmm, yeah.

22 MEMBER DANZINGER: How long do you generally have
23 it on-site before you are using it in some application,
24 whether it's daily cover or whatever?

25 MR. PRYOR: Hi. My name is Greg Pryor. I'm the

1 general manager for Nor Cal Waste, Hay Road Landfill.
2 First, we need to understand, it is a permit operation.
3 We have been processing biosolids out there now for
4 approximately seven years. Their biosolids are received
5 from the city and county of San Francisco.

6 And we have a Class 2 waste pile permitted.
7 Ricardo referred to DM9. That is a lined module that we
8 store biosolids for the city and county of San Francisco
9 in the wintertime.

10 In the summertime, we have a permitted land
11 treatment unit, which is approximately 20 acres, of which
12 we have impeded on with our compost footprint now. We're
13 asking for some additional area to store some biosolids.
14 That is an approved land treatment unit where we dry those
15 biosolids, mix the biosolids, and we have stockpiled up to
16 80,000 cubic yards per our current permit. And when we
17 build landfill base liners in lieu of using on-site soils,
18 we have a permitted approval from the Water Board to use
19 that in lieu of our operation soil. So it serves as our
20 protective layer for our landfill baseliner.

21 MEMBER DANZINGER: Okay. So the initial approval,
22 if you will, for a five-year, you know, staging period,
23 because that's what it sounds like, is based on the fact
24 that it's going to be used for future applications, and
25 you can't nail down exactly when you are going to be doing

1 that, so you might have a ready supply and it is stored in
2 a lined center --

3 MR. PRYOR: It is stored in the summertime in a
4 lined pond, and it's received in its wet condition. We
5 dry it and blend it with 20 percent soils for a dry
6 material that we use and apply it as an operation soil.
7 It's covered annually, prior to winter, and we dry
8 throughout the summertime, prior to the winter operations.
9 It's covered with six inches of compacted clay and
10 hydroseeded prior to winter.

11 CHAIRPERSON MULÉ: Thank you.

12 MEMBER PEACE: And I guess another question I
13 have, it says the facilities identified in the CSE under a
14 different name. It was changed back in 2001. Has that
15 ever been changed, the name ever been changed in a CSE?

16 MR. SERRANO: To our knowledge, from the LEA, we
17 are not aware, you know, that the CSE has been allowed for
18 the change of the name. They came to us from -- to change
19 the name from the BNJ Landfill to a Nor Cal Waste Landfill
20 back in 2001.

21 So we need to ask our solid waste planners in the
22 County to see if that has been -- has taken place.

23 MEMBER PEACE: It should be done. If you just
24 look back in Item 1, here's San Leandro, and it's just
25 changing -- something that did need to be changed so they

1 could conform and have everything nice and neat and
2 conform. And here, you have a totally different name for
3 the landfill in the CSE. Seems to me that should be
4 changed, the name should be changed.

5 MR. SERRANO: Yes, we're willing to pass on that
6 information to the appropriate personnel who's doing the
7 change, if it hasn't happened yet.

8 MEMBER PEACE: It happened six years ago.

9 Again, I'm just looking through all of these state
10 minimum standards violations, ADC violations one after
11 another, after another, after another. The handling of
12 asbestos, has gotten violations for that, I don't know,
13 over and over again. I mean, I just have to tell you, I
14 really have a problem with this.

15 One other thing I wanted to address before I
16 forget is that when you have your community meeting, there
17 was a -- someone that brought up that maybe the height
18 increase would affect the Travis Air Force Base. Did you
19 get an okay from the Travis Air Force Base? Is there
20 something on file that says they have seen this and
21 approved it?

22 MR. SERRANO: Yes. We have a Southern County
23 Airport Land Use Commission that gives approval to any
24 kind of projects, and that was part of the EIR that was
25 analyzed, the height increase and didn't have any

1 problems.

2 MEMBER PEACE: I'm not talking about the EIR.

3 Has it been approved, like, by the National
4 Aeronautical whatever? Because in San Diego, we had the
5 same kind of problem that's happening right now in San
6 Diego, where we have a large -- a tall building that got
7 all its permits from the City, had its EIR, everything
8 done. We built the building. Then the National
9 Aeronautical whatever-you-call-it came in and said, "It's
10 too high, you got to take off two stories." So I don't
11 care what the EIR says. I want to know, has it been
12 looked at by the Air Force or the national whatever, that
13 deals with flight patterns, have they approved it?

14 MR. SERRANO: Yes, we have the Travis Air Force
15 Base which is about 5 miles or 7 miles away from the
16 facility. And through the Airport Land Use Commission,
17 you know, the Air Force base commander delegated to a
18 committee to evaluate this particular project. And an
19 increase of 50 feet high was considered not --

20 MEMBER PEACE: The airport has actually looked at
21 it, and they have approved it?

22 MR. SERRANO: Yes.

23 MEMBER PEACE: I just don't have any questions. I
24 really, really am having a problem with this.

25 Our Strategic Directive No. 4, landfill

1 management, which actually we're going to discuss in
2 Item 17 tomorrow, 4.1, the Board's goal is to assure that
3 a hundred percent of the active landfills meet state
4 minimum standards as well as permit terms and conditions.

5 Does this mean that we assure that a hundred
6 percent of the landfills meet state minimum standards at
7 the time of their permit revision? Or does it mean that
8 we want compliance all the time?

9 You had these violations and you are trying to get
10 a revision, and you are still having all these violations;
11 you still can't comply with your permit. I mean, this
12 landfill many, many times did not meet state minimum
13 standards or violating the terms and conditions of their
14 permit, over and over again.

15 MR. PADILLA: From 2006 to 2007, violations,
16 there's a lot of violations in 2006. And they were
17 corrected, and you'll see, there's a lot less violations
18 in 2007.

19 MEMBER PEACE: There were still some. Here, you
20 are trying to get a revision and you still can't, you
21 know, comply.

22 So the Hay Road Landfill was listed on the
23 inventory. To me, that's the bad boy list --

24 MEMBER CHESBRO: Why wouldn't that be a bad girl
25 list?

1 CHAIRPERSON MULÉ: Or a bad person list?

2 MEMBER CHESBRO: Or a bad list?

3 MEMBER PEACE: Bad boy slash girl list.

4 It was listed on the inventory in February of
5 '07 this year. And then you came off the inventory in
6 March of this year; is that correct?

7 MR. PADILLA: That's correct, yes.

8 MEMBER PEACE: Okay. You tell me if I'm wrong.

9 What does it take to get on the inventory list in
10 the first place? First, I believe it's two consecutive
11 months of state minimum standards violations. Then you
12 are given a notice of intent to list on the inventory.
13 And then you are give even 90 days to correct the problem.
14 And then if it's not corrected, then you go on the
15 inventory, and you are already placed on the inventory
16 once this year.

17 So it's a long process where you are given, you
18 know, chances to make the corrections before they ever
19 actually -- before you are ever actually placed on the
20 inventory. And you couldn't do that within the 90 days,
21 so you went on the inventory. And then most recently --
22 tell me again if I'm incorrect. Most recently, on
23 October 31st of this year, Hay Road was given another
24 notice of intent to list on the inventory for ADC
25 violations; is that correct?

1 So for right now, you are under a notice that you
2 are going to go on state inventory list, the bad list,
3 right now, and you are here asking us for a revision?

4 MR. PADILLA: The C&D fines was used as an
5 alternative daily cover. It was not approved. And the
6 landfill has stopped using that as ADC cover. And they
7 are in the process of getting a demonstration project for
8 C&D fines, which I believe they are working on right now.
9 The plan's almost been approved.

10 MEMBER PEACE: To me, it sounds -- we should not
11 be rewarding Nor Cal with the increase they are requesting
12 until they can prove to be a landfill that meets state
13 minimum standards and abides by the terms and conditions
14 of their permit all the time, just not the month that they
15 are up for a review.

16 To me, I can't even think about approving this
17 until, like, you can comply with your permit for at least
18 a year, not a month. It seems like you are pushing the
19 envelope with ADC and the appropriate -- inappropriate
20 handling of asbestos, like over and over again,
21 repeatedly.

22 And as long as you are in compliance one time at
23 the pre-permit inspection, then that's okay? To me,
24 that's not okay.

25 MR. PRYOR: Let me try and answer that as best I

1 can. Our previous permit actually had approval for use of
2 ADC construction and demolition debris as alternative
3 daily cover. We have been employing the San Francisco C&D
4 MRF fines as an alternative to daily cover since
5 approximately 2003, without any violations up until about
6 2006. And at that particular time, we were made aware of
7 a definitional change in construction and demolition.

8 We had been using this material for approximately
9 three, three and a half years, with no violations, no
10 areas of concerns, and upon the change of an inspector, we
11 were notified that we had no longer the rights to use this
12 material as an ADC, because it did not meet the definition
13 of the new Waste Board definition of C&D demolition
14 material. We felt that we did have the entitlements, Ms.
15 Peace, to be using that so we could continue to use that
16 working with the LEA and the state on defining this
17 material. And if we had the appropriate entitlements to
18 use that. Obviously, we had not. We have gone through a
19 six-month demonstration project, a quasi demonstration
20 project implementing best management practices, to utilize
21 this material.

22 The material is construction and demolition
23 material that's derived from a screening process at the
24 C&D processing plant in San Francisco. It's a
25 two-and-a-half-inch material and contains materials

1 typical in construction and demolition. We failed to
2 recognize that there is sheet rock in this material, and
3 we have defined that now as part of the component which is
4 not included in the state definition for construction and
5 demolition.

6 MEMBER PEACE: That wasn't the only violation.
7 There's been violations of mishandling of asbestos.

8 MR. PRYOR: Correct.

9 MEMBER PEACE: There's violations of not turning
10 in when we have requested a five-year review; you didn't
11 turn in your -- you know, requested over and over that you
12 turn that in for review, and it wasn't done.

13 MR. PRYOR: Correct. On the asbestos, we have a
14 fully permitted -- it's actually the 1964, the unlined
15 monocell that was -- module -- that was for inert disposal
16 only. We had asbestos disposal. And I have been in this
17 facility since 1992.

18 Again, with the new inspector, he came in and was
19 under the impression that friable and non-friable had to
20 be source separated for disposal. We had never had that
21 in practice. And he continued to write violations. And
22 as coming to an agreement, we had agreed to separate
23 friable from non-friable asbestos. That's what those
24 violations were for.

25 And I don't think we've had a violation in the

1 asbestos monofill in over a year, I believe. But we
2 have -- our permit does not say specifically to separate
3 friable from non-friable. That had been our practice. We
4 disposed in one area and he felt that they had to be
5 separated, and so the violations were written. To work
6 with them, we did -- we currently now separate our friable
7 from non-friable. But prior to that, and since that time,
8 I don't think we had a violation from the asbestos
9 monofill.

10 MEMBER PEACE: Well, it is -- to me, in order to
11 assure that a hundred percent of our active landfills meet
12 state minimum standards as well as the permit terms and
13 conditions, that -- I just can't see approving this. To
14 me, I always relate this to kids, because that's my frame
15 of reference. To me, this is like telling your kids,
16 clean your room and they don't do it; go to school and get
17 good grades, and they don't do it; come home before
18 curfew, and they don't do it. But then, on their
19 16th birthday, they get a new car.

20 And to me, this is -- the revisions, to me, that
21 you are asking for, the increase in capacity, the increase
22 in the elevation, and change in the closure date, none of
23 these things will help you in any way. These are all
24 things for the future. They are not anything that you
25 need now in order to better comply with the thing you

1 have, the permit you have.

2 So to me, there's no justification for approving
3 this now.

4 MR. PRYOR: Again, I would like to go back.
5 There's a period in time -- I've been out there for close
6 to 14 years, actually over 14 years, have been through
7 several state inspectors, several local inspectors, and we
8 had an inspector come in from Solano County. And if you
9 look at the bulk of those violations, they were written in
10 that time period. And I fully felt that under our
11 previous solid waste facilities permit, we had the
12 entitlements to construction and demolition debris. There
13 was a revision to that, that, yes, we weren't aware of.
14 We continue to use that material. It meets all the
15 criteria for sizing. Because it didn't include sheet rock
16 and some other materials that weren't in the definition,
17 this gentleman found us to be in violation. We fought
18 that because we felt we were entitled to alternative daily
19 cover use for construction demolition material.

20 On the asbestos, we've run that asbestos monofill
21 since I've been out there, for 14 years, and we can go
22 back on the record and show, we went through this brief
23 period of time with this one gentleman that had a
24 misunderstanding. He felt our permit required we separate
25 friable from non-friable, which it does not state that.

1 And because of that, he was writing violations.

2 To comply with him, we have separated those, under
3 no condition in our permit. And I believe -- I'm not sure
4 how long this gentleman has been gone, but maybe eight
5 months, nine months, we have not had any operational
6 violations in the monofill. We take our asbestos monofill
7 operations very seriously. We test annually for our
8 employees for their health and safety and their welfare.

9 The violation was based on, in his opinion,
10 friable and non-friable were to be separated during
11 disposal. And we weren't -- our permit did not read that
12 way. But we did comply with his request and have
13 separated friable from non-friable.

14 MEMBER PEACE: But still, that really doesn't
15 explain the fact that you have already been on the
16 inventory once this year, and now you are under an order
17 to go on it again unless you make some corrections.

18 MR. PRYOR: That was given to the ADC material.
19 We were on it and we were told to stop. And once we were
20 told to stop using it, we have stopped using it. We are
21 no longer using it for cover, correct.

22 CHAIRPERSON MULÉ: Do you have any other
23 questions, Board Member Peace, because I think Board
24 Member Danzinger has some, and I have some. So we can all
25 share in our frustration here.

1 Go ahead, Board Member Danzinger.

2 MEMBER DANZINGER: I just have a couple questions.
3 And I think these are probably more directed towards staff
4 and the LEA than the operator.

5 A couple of points that Board Member Peace raised
6 that I wanted to get clear in my mind. First of all, the
7 inventory issue. So this is a facility that has been on
8 the inventory before and they are in the process of going
9 back on the inventory at this time for another reason. So
10 I want to reconcile the fact that, you know, the item
11 comes to us with a recommendation for concurrence while
12 they are headed to the inventory. I just want some
13 background on that in terms of what is the context for
14 that? Are those unrelated to a sufficient degree, that
15 that is not a factor in considering concurrence or
16 nonconcurrence?

17 MS. MADISON-JOHNSON: Member Danzinger --

18 MEMBER DANZINGER: I keep looking at Michael
19 because I always expect Michael to answer.

20 MS. MADISON-JOHNSON: Let me take a stab at it,
21 and if I need some assistance, I can have him.

22 The process for going on the inventory is, if
23 after two consecutive violations have been noted through
24 LEA inspections, we send a letter to the operator and the
25 LEA notifying them, if they do not correct that violation

1 within 90 days, they will be placed on the inventory.

2 So right now, it's not an order; it's merely
3 notification that if they don't correct the violation
4 within 90 days, they will be put on the inventory.

5 MEMBER DANZINGER: Okay.

6 MS. MADISON-JOHNSON: So the --

7 MEMBER DANZINGER: They are not currently on the
8 inventory. They have been in the past and were removed
9 from it. And now they have received a letter indicating
10 that they will be placed on the inventory if they don't
11 correct said violation within 90 days?

12 MS. MADISON-JOHNSON: Correct.

13 MEMBER DANZINGER: And are those violations
14 unrelated to the item -- you know, again, I mean, the
15 finding of compliance, conformance, with state minimum
16 standards, the violations you are talking about that are
17 in the letter, what are those?

18 MS. MADISON-JOHNSON: I don't have the letter in
19 front of me. But I understand the violations noted were
20 ADC, for use of the ADC applications that --

21 MEMBER DANZINGER: So that's a permit violation,
22 not a state minimum standard violation?

23 MS. MADISON-JOHNSON: It's state minimum standards
24 violation.

25 MEMBER DANZINGER: It is a state minimum standard

1 violation?

2 STAFF COUNSEL BLEDSOE: Yes.

3 MS. MADISON-JOHNSON: Yes, state minimum standards
4 include a list of materials that can and cannot be used.

5 MEMBER DANZINGER: Okay. So then the question is,
6 I guess, is it a state minimum standard that does not rise
7 to the level that it would -- you know, the staff could
8 not make a finding with compliance of state minimum
9 standards for purposes of the permit at this time?

10 DIVISION CHIEF DE BIE: If I could interject.
11 Mark de Bie with the permitting group.

12 When staff makes a recommendation to the Board
13 relative to compliance with state minimum standards, it's
14 based on staffs' inspections. Staff went out to the site
15 on Friday, they inspected the site, they found complete
16 compliance with all of the standards. So based on that
17 record, we formulate our finding and make a recommendation
18 to the Board.

19 The inventory process is entirely based on an LEA
20 finding relative to compliance. So I will ask Ed or
21 Ricardo where they are with the ADC issue, whether they
22 are going to be noting compliance or if they are going to
23 continue noting violation. When staff went out, they did
24 not observe the use of the ADC and therefore the site was
25 in compliance with that requirement.

1 MEMBER DANZINGER: Is that an announced inspection
2 or an unannounced inspection?

3 DIVISION CHIEF DE BIE: It's always unannounced
4 from our side.

5 MEMBER PEACE: They have a permit before the
6 Board, so they know it's coming; they are going to be on
7 their best behavior.

8 MEMBER DANZINGER: They should also be on the best
9 behavior because they know the LEA could come out at any
10 time, not just when they are up for a permit.

11 MR. PADILLA: Yes. I went out with Sue Markie and
12 Randy Friedlander on Friday, and there was compliance with
13 ADC that was not being used as cover, and there was no
14 violations at the landfill.

15 MEMBER DANZINGER: Okay. My second question --
16 and this relates to, you know, the concern that I share
17 with Cheryl over, you know, the compliance history. And
18 that's always a red flag. You know, it bears closer
19 attention to where they stand now. Can I get like -- and
20 I know this has been touched on, piecemeal, through some
21 of the testimony here that's already taken place. But can
22 I get sort of an overall report, if you will, on what is
23 the status of those past compliance issues that have been
24 most predominant. So, like, in the years where there's a
25 lot of -- you know, I mean, we've got, you know, here

1 where it's 11 and others, it's 33, and most of them fall
2 into the category of, like, a couple different things --
3 you know, the compost activity within the permitted
4 boundary, the ADC stuff, you know, all that. Yeah, ADC
5 standard again.

6 So I would like from staff and the LEA, you know,
7 what is the status of those things that have comprised the
8 bulk of the violations in the past? Because those are the
9 systemic problems. And so where do those stand today?

10 And please, give me something more than the day
11 that we went out and did an inspection. I mean, if
12 there's something more that you can elaborate on that
13 speaks greater than a two-hour time period, that would be
14 great.

15 MR. PADILLA: Predominantly, the landfill had the
16 C&D fines listed as a violation for alternative daily
17 cover. That issue we hope has been resolved. The
18 operator is no longer using the C&D fines as alternative
19 daily cover. They do plan to use it as a demonstration
20 project, and they have been submitting plans to do that
21 since September. And we've been reviewing that along with
22 the Waste staff, and there's been revisions needed and
23 extra information. And we thought it was approved last
24 week, but there was a -- more and more information. So it
25 still has not been resolved, but we do believe that it

1 should be resolved in the next couple of weeks.

2 The next violation was a new application for a
3 permit review. And that has been resolved and did submit
4 that information, and so that's no longer a concern.

5 The next category would be the asbestos
6 violations, and apparently, the -- Greg Pryor talked about
7 that, mixing the refuse that come along with the friable
8 asbestos waste, putting together demolition of a house
9 that has asbestos, they can identify it with friable, they
10 bag that, but there's a lot of other waste that's in the
11 building. So the owner and the operator is unsure, so
12 they bring that in with the asbestos material. And at
13 that time, they were keeping it together.

14 Now they separate it. They have been doing that
15 since I've been inspecting them for the last seven or
16 eight months. And so that's no longer a concern.

17 MEMBER DANZINGER: Are there any I'm missing among
18 those that have, you know, come up on several occasions?
19 And I would also like staff's, you know, feedback on these
20 issues as well.

21 MS. MADISON-JOHNSON: In 2006, the agenda reflects
22 the violations were ADC and asbestos for various kind of
23 different reasons.

24 MEMBER DANZINGER: The ADC, it was ten times. Was
25 that the same issue every time?

1 MS. MADISON-JOHNSON: It's basically them using it
2 unapproved.

3 MEMBER DANZINGER: An unapproved material.

4 MS. MADISON-JOHNSON: In 2007, the violations
5 noted were failure to submit a permit review, which the
6 LEA did discuss that, and then using the unapproved ADC
7 material. And inadequate intermediate cover and
8 inadequate cover material, stockpiling. So those two
9 would be areas you might want to ask about, or the LEA
10 might be able to provide you --

11 MEMBER DANZINGER: Just from a common sense
12 perspective, so ten times on the ADC. That would have
13 been -- that means it would have been identified ten times
14 when an LEA went out there?

15 MR. PADILLA: Yes.

16 MEMBER DANZINGER: So when you went out there. So
17 it was in '06. So you go out there, like, on a monthly
18 basis?

19 MR. PADILLA: Yes.

20 MEMBER DANZINGER: So that means ten times over
21 there, you went out there, they were using it. You
22 obviously told them, "Don't use it."

23 MR. PADILLA: Yes.

24 MEMBER DANZINGER: And they continued using it.
25 What's going on?

1 Now, is this all related to the guy you were
2 talking about eight months ago, who left eight months ago?
3 I sure hope so because that's pretty recalcitrant.

4 MR. PRYOR: We were using it for three and a half
5 years prior.

6 MEMBER DANZINGER: The more -- the common sense
7 thing, somebody comes out and says, "You are not supposed
8 to use this," and then a month later, they come out and
9 are still using this. "You're not supposed to use this."
10 They come out a month later, and so on and so on. So
11 that's ludicrous.

12 MR. SCHMIDTBAUER: Terry Schmidtbauer,
13 environmental health manager for Solano County.

14 I just want to defend staff. We did have a staff
15 person that was inspecting it and accounted for the
16 majority of violations. However, I do disagree with the
17 operator, in terms -- they seem to be suggesting it was a
18 road inspector, and I just want go on record saying that
19 all our staff are adequately trained in how to conduct
20 inspections and in the laws and regulations.

21 The issue at hand, though, that we're dealing
22 with, with ADC, is that this material is not approved
23 based upon state minimum standards for C&D waste. It
24 contains sheet rock, basically, which is not an approved
25 material and C&D waste for ADC.

1 We were working with the operator in doing a
2 demonstration project. So, yes, we probably should have
3 maybe progressed the violation upward, but we felt we were
4 getting good compliance as far as getting a demonstration
5 project, working with the Integrated Waste Management
6 Board staff of solving the problem and having an approved
7 demonstration project to see how this material worked. So
8 that's where we're currently at.

9 MEMBER DANZINGER: So the demonstration project is
10 one and the same with the use of C&D as ADC?

11 MR. SCHMIDTBAUER: Yes, correct.

12 MEMBER DANZINGER: So was it an unapproved
13 demonstration project? If it's a demonstration project,
14 they are using it, how can it be a violation? And if it
15 is truly a violation, how could it have been an approved
16 demonstration project?

17 MR. SCHMIDTBAUER: Right. It is not an approved
18 demonstration project. They were using it without an
19 approval.

20 MEMBER DANZINGER: Okay. But you all were just
21 interested in, let's see if they can make this work.

22 MR. SCHMIDTBAUER: Correct. We were working with
23 staff, working with the operator, trying to get this
24 resolved and probably went a little bit longer than what
25 it should have went.

1 MEMBER DANZINGER: But it sounds like a problem
2 also is up front, you know, when a demonstration project
3 needed to be proposed and approved but wasn't, and
4 basically, moving forward with the demonstration project
5 without the approval. Because what you are saying is, you
6 were of a mind that this is good and let's do this, but
7 the LEA is saying -- because doesn't the LEA work for you?

8 MR. SCHMIDTBAUER: Correct.

9 MEMBER DANZINGER: So why is the LEA giving
10 violations for violations of ADC when you and him both
11 feel or, you know, when you are thinking, this is
12 something that we want to do, you know, and --

13 MR. SCHMIDTBAUER: Well, we have to issue a
14 violation because you can not use the ADC without an
15 approved demonstration project. And an approved
16 demonstration project means that we approve it and the
17 Waste Board staff approve it or Waste Board approves it.

18 MEMBER DANZINGER: But we never got a request for
19 a demonstration project, back before '06, before using it.

20 MR. SCHMIDTBAUER: We have -- the LEA did forward
21 a demonstration project to the Waste Board. I guess, let
22 me reset it a little bit. It kind of goes back to what
23 Greg Pryor with the operator said.

24 They were using this material before. Code 3,
25 somewhat, code change somewhat. However, the use of the

1 material also -- the amount coming to the site also
2 increased with time.

3 So looking at the new ADC regs where it
4 specifically listed out the material and looking at what
5 this material was, we felt there needed to be a
6 demonstration project. They submitted -- they did submit
7 one to us. We forwarded it to your staff. It was not
8 approved and they continued to use it.

9 So we were issuing violations for continuing to
10 use the product without an approved demonstration project.
11 We wanted to get to the point of having an approved
12 demonstration project, but we weren't -- you know, we
13 weren't there yet. We realize we were going to get there,
14 so we kind of forced violations which we had to do by
15 state law, knowing that the operator was working on
16 getting us a demonstration project that we and your staff
17 could approve.

18 MEMBER DANZINGER: Okay. I won't go any further.

19 CHAIRPERSON MULÉ: But as of today, and I will
20 direct this to staff, we do not have an updated
21 resubmittal of the project; is that correct?

22 PROGRAM DIRECTOR RAUH: We have received a pilot
23 demonstration project.

24 MEMBER DANZINGER: A couple of months ago.

25 PROGRAM DIRECTOR RAUH: Proposal. My

1 understanding is that we have a new version and we're in
2 the process of reviewing it at this point.

3 CHAIRPERSON MULÉ: Okay. Because I think late
4 last week, we didn't have it yet.

5 PROGRAM DIRECTOR RAUH: No, I believe --

6 CHAIRPERSON MULÉ: Mark, do you want to address
7 the Board?

8 DIVISION CHIEF DE BIE: I'm sorry. What was the
9 specific question?

10 CHAIRPERSON MULÉ: The question is, did we receive
11 resubmittal or updated project?

12 DIVISION CHIEF DE BIE: Yes. And we're currently
13 reviewing it and it's very, very close to our
14 expectations. There's a few items that we'll bring to the
15 attention of the LEA and the operator to see if we can
16 refine it. But it's very, very close.

17 CHAIRPERSON MULÉ: Okay. Thank you.

18 Any other questions?

19 MEMBER DANZINGER: Maybe we ought to do something
20 similar now like a couple of logarithms.

21 CHAIRPERSON MULÉ: I just want to make a few
22 months here.

23 I too have some grave concerns with the compliance
24 history at this facility. I mean, there is no excuse for
25 you to have inspections, monthly inspections, and then for

1 ten times in one year, to have the same violation noticed
2 for ADC.

3 So that concerns me, number one. Number two, I
4 also have concerns with the LEA and with your level of
5 enforcement. I mean, you are an extension of this Board
6 and this organization. And it's your job to make sure
7 that all the facilities that you are responsible for meet
8 the environmental standards and the regulations that we
9 have set forth. So frankly, I'm disappointed in the fact
10 that you all haven't really done your job to the best of
11 your ability, in my opinion.

12 The whole ADC issue, I heard the facility manager
13 indicate that there was a change in definition for C&D. I
14 guess I would -- my question to staff is, when did that
15 definition occur or when did that change in definition
16 occur, that all of a sudden, now they were in violation on
17 the term -- the C&D fines. And so if you could answer
18 that question, fine. If you can't, we can get that later.

19 But then my other comment is that I also heard the
20 applicant say that, well, we didn't know that this was,
21 you know -- what we were supposed to do. Well, in my
22 opinion, ignorance is no excuse for not adhering to the
23 law. It's your job to know what the laws and regulations
24 are in California and to abide by them.

25 I mean, everybody else has to adhere to these

1 standards. So I guess my concern is that -- I agree with
2 Board Member Peace. Why would we allow this facility to
3 continue to operate when they are not in compliance? They
4 may have been in compliance last Friday when our staff was
5 out there, but the history tells us otherwise.

6 So I don't know if staff could answer the question
7 that I had on the change in definition.

8 PROGRAM DIRECTOR RAUH: I don't think I can tell
9 you at this particular moment. I can certainly find out
10 and get back to you.

11 CHAIRPERSON MULÉ: It was a while ago. I don't
12 recall it.

13 MEMBER DANZINGER: Wasn't it a few years ago, like
14 '03 or '04?

15 MS. MADISON-JOHNSON: I think it was '04 or '05.

16 MEMBER DANZINGER: I think that -- that's a long
17 time to not have it squared away.

18 CHAIRPERSON MULÉ: So with that, I will ask for a
19 motion.

20 MEMBER DANZINGER: You know, I'm going to --
21 Cheryl, before you make the motion on this, just a quick
22 comment on -- because I want to say, you know, I don't
23 take -- and this is to staff. I don't take issue with the
24 recommendation that you are providing it. I mean, it is a
25 basis, you know, in the law and the regs, you know, but I

1 also fear when we take a cramped view of our role.

2 So go ahead, Cheryl.

3 MEMBER PEACE: Well, I would like to move
4 Resolution 2007-241, Option 2, to object in the issuance
5 of the proposed permit.

6 CHAIRPERSON MULÉ: Do I have a second?

7 MEMBER DANZINGER: I will second.

8 CHAIRPERSON MULÉ: I have motion by Board Member
9 Peace, seconded by Board Member Danzinger.

10 Donnell, please call the roll.

11 EXECUTIVE ASSISTANT DUCLO: Members Danzinger?

12 MEMBER DANZINGER: Aye.

13 EXECUTIVE ASSISTANT DUCLO: Peace?

14 MEMBER PEACE: Aye.

15 EXECUTIVE ASSISTANT DUCLO: Chair Mulé?

16 CHAIRPERSON MULÉ: Aye.

17 Michael?

18 STAFF COUNSEL BLEDSOE: Madam Chair --

19 MEMBER DANZINGER: Did we just break the law
20 Michael? You should have told us before we voted.

21 (Laughter.)

22 STAFF COUNSEL BLEDSOE: My tongue was twitching,
23 but not quite fast enough.

24 In order to object to a proposed permit, the Board
25 has to state -- pardon me, the committee would have -- of

1 course it goes to the Board, but the committee has to
2 specify the evidence on which it's basing its decision.

3 So if you would spend a moment focusing on the
4 particular reasons why you feel this proposed permit does
5 not comply with state -- with the requirements of Section
6 44009, in particular, state minimum standards.

7 CHAIRPERSON MULÉ: Well, I think that Board Member
8 Danzinger had discussed the fact that when our staff --
9 you know, our staff made their recommendation based on a
10 certain point in time. And I agree with him, you did
11 everything you could in terms of complying with the law.

12 But again, the history here tells us another
13 story. The history of compliance is, at least, clear to
14 me that they've been noncompliant for a majority of the
15 time, for a number of years. So just because our staff
16 goes out one day and everything is in order doesn't mean
17 necessarily that the facility is in compliance. So that's
18 one thing. And I don't know if any other Board member
19 wants to state something.

20 MEMBER DANZINGER: This is what struck me as well
21 is that we know that they do currently have state minimum
22 standards violations for which they may be placed on the
23 inventory. And even though that is not taken into the
24 context of the inspection and what the staff
25 recommendation and the agenda item is, the fact still

1 remains, there are current state minimum standards
2 violations.

3 And so I think I would need -- I think I would
4 need to see them cleared. I mean, I might be able to live
5 with -- on a particular day, you know, that that's enough,
6 because that's how we do business or whatever. But I
7 would like to at least see all state minimum standards
8 violations cleared at the time that we're being asked to
9 concur in a permit.

10 Now, you will have to correct me, Michael, if I'm
11 wrong on that basis, because, you know, generally, when I
12 have a problem with a permit, I will abstain because we
13 have a legal obligation to concur in the issuance of a
14 permit if we find -- and if the finding is that it's met
15 those standards. So I will abstain for purposes of
16 sending a message and say, "I can't vote no, legally, but
17 I'm not happy with this either."

18 Now, if I have to do that, that's what I will do.
19 But I have assumed that because it's current as in these
20 violations that may or may not be cleared, shortly, that
21 that's a relevant issue.

22 STAFF COUNSEL BLEDSOE: Yes, sir, I think that
23 certainly would be a relevant issue. But we do have a
24 factual question that we would like to get clarified here
25 to whether -- although it is on notice of being placed on

1 the inventory, your point is that -- your statement
2 is that there are current state minimum standards
3 violations. And I would like to clarify whether that, in
4 fact, is the case.

5 DIVISION CHIEF DE BIE: Mark de Bie again.

6 I believe I was clear in indicating that our
7 inspection on Friday indicated that there was absolutely
8 no state minimum standards violations. I believe Ed
9 Padilla with the LEA also iterated that the LEA was also
10 finding, as of Friday, there are no state minimum standard
11 violations at this site.

12 MEMBER DANZINGER: Right. And I heard that.

13 But I want -- is there a right-hand, left-hand
14 issue where we have a separate portion of staff that has
15 identified current SMS violations and --

16 DIVISION CHIEF DE BIE: There are no current state
17 minimum standard violations. All of the violations
18 previously noted; there are no current violations.

19 MEMBER DANZINGER: As of that day. But again, we
20 still have in our process a current finding. I mean, even
21 though that one day didn't find anything we still have
22 technically a current finding of SMS violation, which has
23 precipitated the conveyance of the letter. And so I just
24 want to see that cleared.

25 What does that mean then?

1 DIVISION CHIEF DE BIE: Let me assure you that the
2 staff that are dealing with that process of the inventory,
3 based on their finding and the LEA's finding, especially
4 the LEA's finding, will be submitting a letter to the
5 operator and the LEA indicating that that notice is to
6 longer viable. So they will be stopping the inventory
7 process based on the most recent finding.

8 MEMBER DANZINGER: Okay.

9 CHAIRPERSON MULÉ: Based on the inspection from
10 Friday?

11 DIVISION CHIEF DE BIE: It only takes one time of
12 being in compliance to stop the inventory process.

13 MEMBER DANZINGER: Okay. And so your inspection,
14 for purposes of this agenda item, is an appropriate
15 determination of the rescinding of the letter?

16 DIVISION CHIEF DE BIE: No, it's the LEA's
17 determination. And the LEA indicated today that they
18 found him in compliance. So we could ask Ed to come up
19 and affirm that they will be noting full compliance with
20 all state minimum standards. Once we get that formally
21 noticed, then a letter will go out, ceasing, or stopping,
22 the inventory process.

23 MEMBER DANZINGER: We don't ask for a separate
24 verification.

25 DIVISION CHIEF DE BIE: The inventory is

1 completely based on the LEA's inspection record, not the
2 Board's inspection findings. It's the way it's outlined
3 in the regulations. So based on the LEA's testimony
4 today, I was affirming that we would be planning to cease
5 the inventory process. That's certainly contingent on
6 getting a formal inspection report from them.

7 MEMBER DANZINGER: Okay. Thanks, Mark, for
8 clearing that. I'm still not prepared to vote for the
9 permit, but if I may --

10 CHAIRPERSON MULÉ: I'm going to ask Legal for some
11 advice here and hopefully you can help us with this,
12 because basically you are saying that we cannot deny the
13 permit based on the facts that are here before us today.
14 Am I hearing that correctly or no?

15 STAFF COUNSEL BLEDSOE: No, ma'am, I did not say
16 that. I was focusing on the specific point of whether
17 there are current state minimum standards violations at
18 the facility.

19 CHAIRPERSON MULÉ: We were just told no.

20 STAFF COUNSEL BLEDSOE: Correct. That was number
21 two.

22 The first reason that you gave, that I believe you
23 expressed, is that this facility has quite a long history
24 of failing to comply with state minimum standards. I
25 think you correctly pointed out that the LEA is really not

1 doing its enforcement job either. But from what you have
2 said, it sounds to me like the substantial evidence on
3 which you base your objection to the proposed permit is
4 the demonstrated failure of this facility to be able to
5 comply with state minimum standards, notwithstanding what
6 is written on the piece of paper that is the permit
7 itself. This facility has simply elected not to comply
8 with state requirements.

9 MEMBER DANZINGER: Yeah, I guess for me, the
10 fundamental issue now is a matter of timing. I mean, this
11 is a little quick. I mean, I would love to see like, you
12 know, more time between when there were real problems and
13 when it got turned around. Because it does appear as
14 though they are turning it around and getting things
15 squared away. But it's a very collapsed period of time
16 between when that began and when they're coming here for
17 the expansion.

18 So I think, for me, that's the basis for at least
19 not feeling comfortable supporting it right now. I agree
20 that it does form the basis, sound basis, for the staff's
21 finding, based on where it is now, because that's a
22 moment-in-time finding.

23 So I think I would -- I guess what I would like is
24 a revote, if that's something that we could do, unless
25 somebody else has something else to offer.

1 DIVISION CHIEF DE BIE: Madam Chair, if I may,
2 just from a program point of view, relative to what I am
3 hearing.

4 There have been, in the past, some discussion
5 among the Board relative to how to evaluate state minimum
6 standards in a permit. And in that discussion, that's
7 been looking at sort of the compliance history versus
8 where they are as the permit coming up. And the result of
9 those discussions, my understanding is, always sort of
10 boiled back down to if we can find them in compliance
11 prior to the permit coming forward, that's what we go for,
12 and not looking back at the compliance history.

13 I'm starting to hear Member Danzinger sort of
14 talking about compliance history as a factor. And that's
15 fine. I'm just indicating that that's not currently how
16 staff approaches it. If we want to go down that road, we
17 can explore that. But this would be precedent setting,
18 and we have to think about what it means for other items
19 and other permits coming forward.

20 MEMBER DANZINGER: Point well-taken, Mark. Let me
21 just clarify. I am not -- I'm not recommending that at
22 this time. I think that that kind of discussion should
23 take place in a policy making setting, not through
24 legislating through an individual permit.

25 It's just that when the compliance history is so

1 checked, I think we just need to -- you know, we need to
2 just be a little bit more demanding about where it is at
3 this point in time and how far removed are we from the
4 period in time that there were problems? I mean, if, you
5 know, the problems, you know, ceased in '05 or something,
6 then, you know, okay then we've got like a year and a half
7 or so of pretty sound operation, you know. But again,
8 these problems extended all the way through '06, through
9 operational practices and through what appears to be a,
10 you know, some recalcitrance among the facility operators.

11 So I mean that's more my issue, I guess is that,
12 you know, we're still pretty close to a period where it
13 was in a bad way. And so I think you just have to look a
14 little more closely because, you know, this is one that
15 merits, you know, closer review. And we have to demand a
16 high standard be met so that we have some assurance, some
17 degree of confidence that the vote that we're casting here
18 is, you know, is in the public interest.

19 So that's more my point, Mark, than trying to
20 explore some kind of policy shift in how we concur in
21 permits.

22 MEMBER PEACE: We've concurred in permits that
23 have had state minimum standards before, like they say
24 they have a gas violation, they've already put in the
25 wells, and they're working on it and we see they are

1 coming into compliance and we'll go ahead and approve it.
2 Or if they are going over their tonnage limits. Because
3 the community has totally grown and they need to approve
4 their permit to allow them to take in more tonnage for the
5 community. Yeah, okay, you are going over what's in your
6 permit, but, yes, we're going to approve any way because
7 that's what's best for protecting the public and the
8 environment is to get that trash in the landfill.

9 This, to me, is a totally different circumstance
10 than that, than either of those things. Multiple issues
11 over a long period of time, the fact that they were
12 working on this permit revision this year, and still being
13 put on the inventory this year, and then being considered
14 being put on the inventory again this year while they are
15 trying to get a height increase.

16 No.

17 DIVISION CHIEF DE BIE: Member Peace, if I may, I
18 agree that in the past, the Board's policies, and now
19 regulations, have tried to find the right balance between
20 making the findings relative to state minimum standards,
21 especially with long-term violations, and the need for an
22 enforceable permit.

23 And so the policy was at one time to allow
24 facilities that had a long-term violation to take certain
25 steps and then if they have accomplished that, the Board

1 would be in place where they can concur on the permit, and
2 then regulations were actually modified to incorporate
3 those criteria in there.

4 So now, per regulations, the Board in that case
5 can find that facility as consistent with state minimum
6 standards which is a nuance difference between compliance
7 with state minimum standards. Technically, the facility
8 is still out of compliance with the gas requirement, if
9 that's the long-term violation. But the Board can say,
10 "Given that you are doing all of these things right, you
11 can be found consistent," and then allow the Board to
12 concur on the permit.

13 I do also hear what you are saying relative to the
14 balance between enforceable permits and those outstanding
15 violations.

16 And I agree, in this case, the quality being, or
17 the aspects being, added to this permit are kind of
18 neutral in terms of enforceable. It does clarify certain
19 of the limitations that were a little bit nebulous before.
20 The operating document does tighten up a lot of the limits
21 and restrictions that were not really clear before.

22 But it also does allow additional new
23 entitlements. So that balance between enforceable permits
24 and allowances and standards, in some aspects is in play
25 with this permit but certainly not in the realm of the

1 entitlements. Just by way of the background and
2 explanation.

3 PROGRAM DIRECTOR RAUH: If I may, Madam Chair,
4 this particular facility -- and I think also as we were
5 preparing for an update of Strategic Directives 4 and 8, I
6 think the issues of the Board's determination of how we
7 satisfactorily assure compliance over the whole range of
8 facilities, this is an example that comes to question.

9 We only have a few facilities listed yet we have
10 perhaps a number of facilities, as you look through, that
11 have violation issues and that occasionally occur, as this
12 one has, being brought up for a list and then go back off.
13 And obviously, if you are a player of the system, and I'm
14 not suggesting this facility is at all, or that we even
15 have this case, but the current structure would allow you
16 to have violation, be cited, be found, be suggested to be
17 put on the list, you have one good month, and then you are
18 back, doing it all over again.

19 So I think that for purposes of both the
20 conversation tomorrow and also by the fact that before the
21 full Board we'll be discussing our compliance plan, that
22 there are two great opportunities for the Board to give a
23 lot of conversation to these issues and determine that
24 we -- both our strategic directives and the direction that
25 staff is going and, for that matter, the LEAs are going,

1 would be consistent with your direction.

2 CHAIRPERSON MULÉ: Thank you, Ted.

3 Elliot, did you have something for us?

4 CHIEF COUNSEL BLOCK: Well, I guess a couple of
5 things. The question was asked about her revote. And I'm
6 seeing a shake of the head that you don't -- we're past
7 that.

8 All I was going to actually also say, and it kind
9 of tails into what Ted is mentioning, given the nature of
10 this discussion and the recommendation of the committee,
11 this is clearly not going to be a consent item for the
12 Board meeting. There will be some opportunity to provide
13 you and the rest of the Board with some additional
14 information regarding some of the issues that you have
15 heard today.

16 CHAIRPERSON MULÉ: Okay. So we can move it to the
17 full Board recommending denial of the permit?

18 CHIEF COUNSEL BLOCK: Correct.

19 CHAIRPERSON MULÉ: Okay. Let's do that, then.
20 All right. Thank you all, very much.

21 MEMBER PEACE: And in the meantime, I do want to
22 make sure that the LEA is working on changing the name of
23 the CSE so everything is conforming.

24 CHAIRPERSON MULÉ: Okay. Let's move on to
25 Committee Item E, Agenda Item 4.

1 PROGRAM DIRECTOR RAUH: Yes. Item E is
2 Consideration of a Revised Full Solid Waste Facilities
3 Permit, Disposal Facility, and Compostable Materials
4 Handling facility, for the Tehachapi Sanitary Landfill.

5 And here to make the presentation for staff is
6 Erica Weber.

7 MS. WEBER: Good morning, Madam Chair and Board
8 Members.

9 Tehachapi Landfill has been in operation since
10 1973 and serves the city of Tehachapi and its surrounding
11 areas. The land is owned and operated by the Kern County
12 Waste Management Department.

13 Currently, it runs a landfill and an incidental
14 green and wood material chipping and grinding operation.
15 The proposed permit package was received October 30th,
16 2007. An updated proposed permit was received on
17 November 16th, 2007. The item was revised late last week
18 to include staff's finding that all requirements have been
19 met.

20 The Kern County Waste Management Department,
21 acting as lead agency, has prepared an environmental
22 impact report for Tehachapi Landfill. The proposed
23 revised full solid waste facilities permit will allow
24 incorporation of a green material handling activity in the
25 permit; an increased permitted maximum tonnage of a

1 thousand tons per day; an increased permitted traffic
2 volume of 700 vehicles per day; an increased permitted
3 facility boundary to 196.16 acres; an increased permitted
4 maximum elevation to 4,065 feet; an increased permitted
5 design capacity of 3,388,723 cubic yards.

6 The LEA conducted an informational meeting on
7 Monday, August 30th, 2007, at 5:00 p.m. It was held at
8 the Tehachapi Veterans Hall. No comments were received.

9 Staff recommends that the Board adopt Board
10 Resolution 2007-235, adopting the environmental impact
11 report and approving the issuance of the solid waste
12 facilities permit.

13 This concludes staff presentation.

14 CHAIRPERSON MULÉ: Thank you very much.

15 MS. WEBER: I would also like to answer questions
16 you may have and the LEA's Bill O'Rullian and the operator
17 representatives Nancy Ewert and Don Fergusson are here to
18 answer any questions you may have.

19 CHAIRPERSON MULÉ: Great. Thank you so much.

20 We do have one speaker, Nancy Ewert.

21 PROGRAM DIRECTOR RAUH: While the speaker is
22 approaching, I just wanted to call your attention to the
23 revised item, that it is a requirement or a request that
24 the Board also approve or adopt the CEQA findings and
25 statement of overriding consideration.

1 I just wanted to make sure that that was called to
2 your attention.

3 CHAIRPERSON MULÉ: Good. Thank you, Ted, for
4 bringing that to our attention.

5 Good morning, Nancy.

6 MS. EWERT: Good morning. I am Nancy Ewert. I am
7 the technical resources manager with the Kern County Waste
8 Management Department.

9 And the Waste Management Department is very
10 pleased. We've been working for over a year to bring this
11 revised permit before the Permit and Compliance Committee
12 for review and recommendation. The Department appreciates
13 both the effort of the Waste Board staff and our LEA in
14 bringing this forward.

15 And I would be happy to answer any questions that
16 you might have.

17 CHAIRPERSON MULÉ: Thank you, Nancy.

18 Do we have any questions for Nancy or for staff on
19 this one? Board Member Peace?

20 MEMBER PEACE: The only question I have is that
21 they put in this permit October 30th and it was revised
22 November 16th, and then we had the holidays and everything
23 thrown in.

24 I just want to make sure that our staff feels that
25 they had an adequate time to review this.

1 MS. WEBER: Yes, the LEA was great in giving us
2 some draft information to look at so I had good
3 conversations with them.

4 MEMBER PEACE: Great. Perfect. Thank you.

5 CHAIRPERSON MULÉ: Okay.

6 Any questions?

7 MEMBER DANZINGER: No, I have no questions. I
8 just want to congratulate the applicant on their timing.
9 It's pretty good, coming after three.

10 CHAIRPERSON MULÉ: Okay. Do I have a motion?

11 MEMBER PEACE: I would like to move Resolution
12 2007-235 Revised.

13 MEMBER DANZINGER: Second.

14 CHAIRPERSON MULÉ: Moved by Member Peace, seconded
15 by Member Danzinger.

16 Donnell, please call the roll.

17 EXECUTIVE ASSISTANT DUCLO: Member Danzinger?

18 MEMBER DANZINGER: Aye.

19 EXECUTIVE ASSISTANT DUCLO: Peace?

20 MEMBER PEACE: Aye.

21 EXECUTIVE ASSISTANT DUCLO: Chair Mulé?

22 CHAIRPERSON MULÉ: Aye.

23 We'll put that one on consent.

24 Thank you all for being here. Appreciate it.

25 Next item, Ted?

1 PROGRAM DIRECTOR RAUH: Yes. The next item is
2 Consideration of Grant Awards for the Farm and Ranch Solid
3 Waste Cleanup and Abatement Grant Fund.

4 This item requests that the Board approve five
5 grants totaling \$330,850 for the second quarter of this
6 fiscal year. The grant application will come from four
7 counties and one tribal group and will address a total of
8 13 sites.

9 And here to present the item is Carla Repucci.

10 CHAIRPERSON MULÉ: Good morning, Carla.

11 MS. REPUCCI: Good morning, Chair Mulé and
12 committee members. My name is Carla Repucci, and I will
13 present Item F for the consideration of five applications
14 for Farm and Ranch Solid Waste Cleanup and Abatement
15 Grants.

16 The amount requested in these applications being
17 brought before you today is \$330,850 and represent the
18 second award of this fiscal year.

19 The Farm and Ranch Grant Program began in 1999 and
20 provides up to \$1 million each year to federally
21 recognized tribes, resource conservation districts, and
22 local governments to clean up illegal disposal sites on
23 farm and ranch property. Applicants may request up to
24 \$50,000 per site and up to \$200,000 per fiscal year.
25 There is \$917,244 remaining in the fund for this fiscal

1 year.

2 Six applications were received this quarter. Five
3 requesting the cleanup of 13 illegal disposal sites and
4 one application requesting reimbursement for a previous
5 cleanup. Each application was reviewed for eligibility
6 and scored. One application has been withdrawn as
7 ineligible at this time. If the proposed grants are
8 approved as recommended, \$586,394 would remain in the
9 fund.

10 The sites being requested for cleanup are in the
11 counties of Sutter, Mendocino, Tehema, Santa Barbara, and
12 Imperial. Removal of the waste will restore the
13 properties back to their natural state and remove the
14 threat to public health and safety and the environment.

15 Each of the applicants have indicated efforts to
16 prevent waste from being redeposited. These efforts
17 include fencing and gates, earthen berms, the posting of
18 signs, and the installation of a surveillance camera.

19 Agenda Item F is consideration of five grant
20 applications for Farm and Ranch Solid Waste Cleanup and
21 Abatement Grants. All five applications meet the
22 eligibility requirements set forth by the statute.

23 Therefore, staff recommends the Board adopt
24 Resolution 2007-236 authorizing the award of up to
25 \$330,850 for the grant applications from the Sutter County

1 Resource Conservation District, the Pinoleville Pomo
2 Nation, the Tehema County Sanitary Landfill Agency, and the
3 Counties of Santa Barbara and Imperial, and directing
4 staff to develop and execute grant agreements.

5 I would be happy to answer any questions.

6 CHAIRPERSON MULÉ: Thank you, Carla.

7 Do we have any questions for Carla or any of the
8 other staff? Board Member Peace?

9 MEMBER PEACE: I have a question.

10 CHAIRPERSON MULÉ: Let's do this speaker first,
11 Mr. LeVeille. Good morning.

12 MR. LDVEILLE: Good morning, Madam Chair and
13 Committee Members and Board Member Chesbro.

14 Terry LeVeille representing TL & Associates who
15 represents the California Tire Association.

16 Usually I come here to squawk about the Farm and
17 Ranch Program because we feel that it uses too much of the
18 tire fund money for the number of tires that you clean up.

19 Today, I come here just to focus on one particular
20 aspect, and it doesn't have anything to do with the tire
21 fund. But it does have to do with sort of the integrity
22 of the program and I believe what was the intent of the
23 program, and that's the Item No. 3 on page 3, the Tehema
24 County one.

25 And all I have to go on is what's in the agenda

1 item write-up. It seems this property owner purchased
2 this property with 400 huge tractor tires. And the only
3 way I can see that they would -- the only two reasons that
4 one would do this, one would either get a really good
5 discount on purchasing the property; or secondly, you have
6 some wild imaginative way to process those tires that
7 later turns out to be faulty thinking, and therefore looks
8 toward the Farm and Ranch Program to kind of bail them
9 out.

10 This is a property that's -- the tires are 75 feet
11 from the residence, so obviously the new property owners
12 saw it. And it just seems like this was not -- you know,
13 I remember when Senator Lockyer proposed this legislation.
14 It was for illegal dumping on property that was way away
15 from a residence and the resident had no idea that that
16 dumping was taking place. This seems to be sort of a --
17 confront that whole essence of what the intent of that
18 legislation was.

19 MEMBER DANZINGER: So we know that -- okay. So we
20 know that the owner of the property was aware of the
21 existence of the tires obviously when they bought it.
22 It's not such a big parcel.

23 CHAIRPERSON MULÉ: So then why would we -- can we
24 get some staff response? Maybe staff could help us out
25 with that. And then why would we then help the landowner

1 pay for the removal of the tires when they bought the
2 property knowing that those tires were on site?

3 BRANCH MANAGER WALKER: Scott Walker, Cleanup
4 Branch.

5 To address that question, essentially, what this
6 program sets up is, is essentially a system by which
7 private property owners are essentially excluded from cost
8 recovery. And in the program, we require an affidavit to
9 be signed by the property owner that they are not
10 responsible for the dumping, and that's supposed to be
11 vetted. It's by the applicant, which is a local agency
12 resource conservation district, in this case, the County.
13 And they complied with that requirement.

14 There's no statutory restriction, per se, on the
15 property owner previously knowing about the tire pile or
16 waste site that they purchase. However, when we go back
17 to the Board for revision and consideration of criteria
18 for the program, the Board looks at this each time and
19 evaluates what -- you know, what restrictions to put on
20 applicants.

21 And so we inform -- in this particular case, we
22 have never had a restriction added by the Board in the
23 criteria that restricts a parcel whereby they bought the
24 parcel knowing there's the site on the parcel. We have
25 changed the criteria to add in the affidavit that they are

1 not -- they do not inherit the site. But this is not a
2 restriction in the current criteria. And therefore, when
3 we receive the application, the staff doesn't have a basis
4 to recommend denial other than on an issue like this. The
5 Board may come back, may decide, well, we need to add more
6 restrictions on the applications. But we don't have that
7 in this particular case. And that's why we're bringing
8 this before you today. So I think the Legal Office can
9 weigh in on this. But that summarizes the basis for this
10 item coming forward.

11 CHAIRPERSON MULÉ: Go ahead, Steve. Thanks.

12 STAFF COUNSEL LEVINE: Steven Levine, staff
13 counsel for the Board.

14 Yes, the Legal Office views this as a matter of
15 policy for the Board. And as Board Member Danzinger
16 mentioned in a different item, before, oftentimes, policy
17 matters are best addressed in a separate policy item.

18 But basically, the statute does not explicitly
19 address this type of a situation, and so it is a matter of
20 policy. And there are two ways the Board can go: One,
21 the way we've been approaching it to date is a very
22 literal interpretation of "responsible." Another way of
23 interpreting this is when a property owner with knowledge
24 of this site purchases the property, likely at a discount,
25 and that could be something that could be fleshed out. A

1 position could be taken that the property owner acquiring
2 the property assumes the responsibility for the pile, and
3 as having taken that assumption of responsibility under
4 that policy decision, you would not be eligible for a Farm
5 and Ranch Grant.

6 MEMBER DANZINGER: It seems as though we would be
7 rewarding someone from properly and effectively
8 negotiating the price down because of the existence of the
9 tires on the property. I don't know whether the person
10 would have had a plan at that time and then, "I know
11 there's a program where I can go get the cash later."

12 But if it's not explicitly prohibited in the
13 policy or the statute, then maybe the question is, you
14 know, how strong was the legislative intent on this, as
15 Mr. LeVeille refers to it. You know, and again, as
16 Rosalie mentioned, you know, there's the rule of common
17 sense as well.

18 But if the legislative intent was strong in this
19 regard, then I certainly would see that as justification
20 to explore, you know, the imposition of some kind of
21 restriction along those lines so that we can cut that off
22 at the pass.

23 MEMBER CHESBRO: Madam Chair?

24 CHAIRPERSON MULÉ: Yes, Board Member Chesbro.

25 MEMBER CHESBRO: I just want to point out that I

1 think this is much a bigger issue than just the Farm and
2 Ranch Cleanup, because we have spent a lot of tire money,
3 have we not, on much larger piles assisting property
4 owners who you could make the similar arguments about. So
5 if we do enter it, it wouldn't be just a discussion
6 about -- it would be a discussion about the tire fund and
7 what the circumstances under which we would be cleaning up
8 on private property.

9 And just speaking specifically to Farm and Ranch
10 Cleanup, and I'm not necessarily arguing the ultimate
11 policy decision, but part of the underlying legislative
12 intent -- I think it was Senator Lockyer's bill and also
13 mine -- was to create a fairly flexible and low hurdle --
14 a program that's not overly burdened with regulatory
15 restriction in order to just get out there and, you know,
16 cleanup those piles -- that once they start turning into a
17 much bigger problem.

18 So but nonetheless, my main point is just if we
19 are going to take it up as a policy item, it's affecting a
20 much larger-scale question.

21 CHAIRPERSON MULÉ: That's a great point.

22 Thank you for bringing that forward.

23 Board Member Peace?

24 MEMBER PEACE: I think we do, in the future, need
25 to talk about policy.

1 But today, right now, to me, this Farm and Ranch
2 Cleanup Grant is for illegal dumping. These 400 tires
3 were not illegally dumped right there next to the house.
4 It's mixed with other tires. It's not mixed with garbage.
5 It's not mixed with white goods. Those were not illegally
6 dumped there. They were put there on purpose by that
7 previous property owner, whether he took them in to do
8 something with them or put them in and was paid a fee to
9 do that. They were not illegally dumped there. They were
10 put there. The previous owner knew that they were put
11 there. He said that they could be put there. And the new
12 owner, now, knew they were there when he brought the
13 property.

14 So for us to approve this would be conferring an
15 economic benefit on that property -- on the new property
16 owner. That is not right. These are state funds, state
17 monies, and we do not confer an economic benefit on a
18 private owner when there was no -- for a program that was
19 meant to deal with illegal dumping on farmland that can
20 be, you know, far away in the farmland, may never see it,
21 and it was mixed with all sorts of gunk. This was not.
22 This was not illegally dumping. These were taken here
23 purposely.

24 MEMBER DANZINGER: Can I ask -- that's a good
25 point, Cheryl.

1 Can I ask, is there a distinction between the --
2 for purposes of eligibility in this program, is there a
3 distinction between the existence of an illegal solid
4 waste site and an illegal dumping, that it got there by
5 way of an act of illegal dumping?

6 Because you see, I'm swayed by your argument to
7 the extent that, okay, you know, these tires were there as
8 storage. It was not like illegally dumped in the middle
9 of the night. The previous owner had them there and
10 planned to use them for something. They weren't illegally
11 dumped. They were stored and then they were illegally
12 stored, I guess.

13 So I just want to make sure that there's not some
14 arcane nuance in the application of this grant program
15 that distinguishes between illegal dumping and it's an
16 illegal dump site.

17 STAFF COUNSEL LEVINE: I think that's something
18 we'd need to look into a bit more. Basically, we've taken
19 the position in the Solid Waste Cleanup Program and in
20 general that regardless of whether a property owner, you
21 know, intends, when he takes certain materials on his
22 site, to have the site become an unpermitted disposal site
23 or an illegal dump, basically if it's viewed that the
24 material is being in its final resting place on the site.
25 Once that kind of a determination is made it is considered

1 either an illegal disposal site and improperly dumped
2 there.

3 So a couple of factors in what you each are
4 discussing here is because, as Board Member Chesbro
5 pointed out, the rather expansive nature of the Farm and
6 Ranch Program, while on its face, it does appear likely
7 to, at the limited information we have, that the prior
8 owner with his full knowledge allowed those tires to be
9 there, I'm not sure whether either the applicant, county,
10 or our staff actually affirmed that.

11 Carla, do you know offhand, did we get that
12 confirmation that in fact the prior owner was responsible
13 on that?

14 MS. REPUCCI: Unfortunately, it's rather a muddy
15 picture. The previous owner was somebody that had come
16 into the practice of buying the property on speculation,
17 and then basically dumping things on it and leaving. So
18 it's a little more confusing.

19 But this owner has owned the property for about
20 seven years and it's clearly active farmland. He's got
21 cows that are walking all around these tires. And not
22 only that, there's an elderberry bush right next to the
23 tires that I know they have to be careful of when they do
24 the cleanup because of the longhorn beetle.

25 MEMBER PEACE: You'd think he would want to clean

1 up the property before this, then, so the tires -- his
2 cows wouldn't be in the tires.

3 STAFF COUNSEL LEVINE: Steven Levine.

4 I could more specifically answer the question.

5 I'm just looking at the statute now. And the Board shall
6 establish a Farm and Ranch Program for the purpose of
7 cleaning up and abating the effects of illegally disposed
8 solid waste pursuant to this chapter. So the question
9 becomes --

10 MEMBER PEACE: This is not an illegally dumped
11 solid waste. This is a tire problem. There should be --
12 we should not approve this and we should be putting a tire
13 enforcement order on that property for it to be cleaned
14 up, is what we should be doing.

15 STAFF COUNSEL LEVINE: It's also, I note, 400
16 large tractor tires, so we'll have to have the tire
17 program address how that deals with the 500 or more
18 criteria.

19 MEMBER PEACE: 500 passenger tires?

20 STAFF COUNSEL LEVINE: We need the Tire Program
21 for that, yeah.

22 CHAIRPERSON MULÉ: Board Member Chesbro?

23 MEMBER CHESBRO: Yeah. Well, something I pointed
24 out from time to time that we sometimes forget around here
25 is that it's not like there's a shortage of money in the

1 Tire Fund -- okay? -- first of all. And second of all,
2 when we go to do the Tire Fund enforcement programs, we
3 prioritize where the largest tires are in this state.

4 So the chances are, we wouldn't get to this for a
5 long, long time, because we're busy with a whole lot of
6 other sites. And even though -- I would poke Terry by
7 saying, he wants us to lower the fee.

8 But you know, again, let me say that the purpose
9 of the program was to have a very flexible way, without
10 going through months and years of legal wrangling, to just
11 go out and scoop up trash and get it out of there and -- I
12 personally would be supportive of this grant.

13 CHAIRPERSON MULÉ: Thank you, Board Member
14 Chesbro.

15 MR. LEVEILLE: Just a quick thing. I just -- I
16 don't have a problem with the program. It's the tire
17 money going into the Farm and Ranch Program. I backed off
18 that one.

19 My concern basically is that the property owners
20 are getting a free ride here. And if you go after some
21 follow-up cost recovery with the property owners, that's
22 fine. But this program, you know, is basically to avoid
23 cost recovery.

24 And Ms. Peace is right on. The previous property
25 owner, whoever got those tires, probably got between 5 and

1 10 thousand dollars for accepting tires and putting them
2 75 feet from their home. It seems kind of crazy, but you
3 can get a lot of money for taking in old tractor tires,
4 significant amounts of money. Because people don't know
5 where to -- especially seven years ago, there probably
6 weren't as many outlets for that.

7 But they got a significant amount of money, and I
8 am certain that if there was a flip on the property, that
9 the new property owners certainly got a discount for
10 having those kinds of tires on their property. I just
11 didn't think that the program should be used to bail out
12 the property owners.

13 CHAIRPERSON MULÉ: So noted.

14 Thank you. Any other comments or questions on
15 this?

16 Board Member Peace?

17 MEMBER PEACE: To me, it doesn't matter how much
18 money is in the Tire Fund. The state should not be in the
19 position of conferring an economic benefit on property
20 owners, period.

21 CHAIRPERSON MULÉ: Any other comments or
22 questions?

23 MEMBER DANZINGER: No.

24 CHAIRPERSON MULÉ: Okay. Do I -- do we have a
25 motion?

1 MEMBER PEACE: Can we make a motion to divide the
2 question and leave out the No. 3, Tehema, approve the
3 other ones, and send that one, maybe, to the full Board?

4 CHIEF COUNSEL BLOCK: Let me make a suggestion.

5 I've got some people whispering in my ears as some
6 of this discussion has been going on, and it seems like
7 there are some factual questions and some legal questions
8 in terms of the program.

9 And as much as I don't want to make the
10 suggestion, this might be a good item to just simply put
11 over to the Board for us to provide some additional
12 information.

13 There's -- that's potentially something we could
14 do, Member Peace. But at this point in time, I'm a little
15 hesitant to say we absolutely can make that separation.
16 So I'd really suggest we put that over to the Board.

17 CHAIRPERSON MULÉ: I think we should. I think we
18 should put it over to the full Board, because I do agree
19 with what Board Member Chesbro is saying. And we don't
20 really know how those tires got there. And I think the
21 more if not all the facts that we have before us, the
22 better decision we can make.

23 MEMBER DANZINGER: Right. And the fact that the
24 decision, it will be something of a precedential decision,
25 because it's obviously going to be based on something

1 that's to drive policy discussion later.

2 CHAIRPERSON MULÉ: Yeah. And that's the other
3 direction that I would like to give to staff, is that when
4 we do have this policy discussion, that we were sure to
5 include this particular example and item. Because this
6 isn't -- it seems like it is an issue. So we will move
7 Committee Item F, Board Agenda Item 5, to the full Board.

8 Okay. That moves us to Item G, Board Agenda
9 Item 6.

10 Ted?

11 PROGRAM DIRECTOR RAUH: Yes, thank you.

12 Item 6 is Consideration of a Grant Award to the
13 City of Antioch for \$750,000 from the Solid Waste Disposal
14 and Codisposal Site Cleanup Program, the Solid Waste
15 Disposal Trust Fund. The grant will provide matching
16 funds for a \$4.1 million project to address environmental
17 concerns for the Antioch Landfill.

18 And here to present the grant application fee for
19 your consideration is Mustafe Botan.

20 MR. BOTAN: Good morning, Madam Chair and
21 Committee Members.

22 My name is Mustafe Botan.

23 Agenda Item No. 6 is for the consideration of a
24 grant award for the Solid Waste Disposal and Do-Disposal
25 site cleanup program.

1 Board staff have evaluated and are recommending
2 approval of a new grant proposal in which the City of
3 Antioch is requesting \$750,000 in a matching fund to
4 remediate Antioch City Landfill, also known as Old Antioch
5 Landfill. The overall project cost is estimated to be
6 around \$4.1 million dollars.

7 The landfill is owned by the City and was operated
8 by the City from 1928 until its closure in 1968, prior to
9 the regulations that required solid waste disposal site
10 owners and operators to establish closure and postclosure
11 maintenance funding mechanisms.

12 The proposed project will separate waste from
13 surface water in Markley Creek; provide long-term
14 stability of creek banks; provide adequate hydraulic
15 capacity and channel protection of Markley Creek; and
16 restore and enhance sensitive habitats.

17 With respect to impacts on the Solid Waste Trust
18 Fund which funds the Solid Waste Disposal and Co-Disposal
19 Cleanup Program, the unreserved balance is \$4.4 Million
20 dollars. This presumes that the program has been
21 reimbursed for funds expended for the cleanup of the
22 Angora fire debris, which was submitted to Department of
23 Finance on November 1, 2007.

24 If the Board decides to approve this project, the
25 unreserved balance in the trust fund would be roughly

1 \$3.65 million dollars.

2 This concludes my presentation and I would be
3 happy to answer any questions.

4 CHAIRPERSON MULÉ: Do we have any questions from
5 staff on this one?

6 Board Member Peace?

7 MEMBER PEACE: It says that this site is owned by
8 the City of Antioch and they were the ones that it was
9 their landfill. And there's also two other property
10 owners?

11 MR. BOTAN: Right.

12 MEMBER PEACE: Can you tell me who those other
13 property owners are?

14 MR. HOFFMAN: Good morning.

15 CHAIRPERSON MULÉ: State your name.

16 MR. HOFFMAN: Phil Hoffman, and I serve as
17 administrative analyst for the City of Antioch.

18 The adjacent property owners are the Contra Costa
19 Sanitary Landfill. And further downstream in Markley
20 Creek is the Sommersville-Gentry property. Antioch has --
21 I believe the City of Antioch has the majority of the
22 linear footage of the creek through its old landfill.

23 MEMBER PEACE: So is this grant also going to
24 clean up the property on Sommersville-Gentry property?

25 MR. HOFFMAN: The grant is for the entire --

1 according -- let's go back a little bit. The order came
2 from the Water Board to clean up the creek. And because
3 of the solid waste that was exposed --

4 MEMBER PEACE: You got a \$300,000 fine; correct?

5 MR. HOFFMAN: Yes.

6 MEMBER PEACE: Have you paid that yet?

7 MR. HOFFMAN: I believe -- it was a -- we did a
8 SEP, a supplemental environment project. We enhanced the
9 wetlands closer down to the Santa Joaquin River and we
10 paid the 150,000. We split the difference with the Water
11 board. That was the -- they approved that.

12 So as you were saying, your question, yes, it's
13 for the City of Antioch. The project encompasses the
14 entire reach of the creek through all the properties.
15 City of Antioch has taken upon themselves to design the
16 entire stretch of it and to be the lead agency to mitigate
17 it.

18 MEMBER PEACE: So are we asking for any kind of
19 cost recovery?

20 MR. BOTAN: Actually, the grant application states
21 that for this application, the city's only presenting data
22 and cost for its exposure only. So they are just
23 requesting what they are going to be fixing, you know, the
24 city's portion. And the other guys are going to come in
25 and fix their own problems.

1 MEMBER PEACE: They are. Because Gentry is fixing
2 their own problem?

3 MR. HOFFMAN: Correct.

4 MEMBER PEACE: They are not part of this?

5 MR. HOFFMAN: Right.

6 MEMBER PEACE: Again, this was the city's
7 landfill. So are we asking for cost recovery from the
8 city? Because it was their landfill.

9 BRANCH MANAGER WALKER: This is Scott Walker from
10 the Cleanup Branch. No, cost recovery would not be
11 applicable to this case. Under the statute, it explicitly
12 allows for landfills that are operated, the operator,
13 local government operator to be eligible, potentially
14 eligible, for a matching grant. A cost recovery would not
15 be applicable to this, and, of course, this basis, too, is
16 the fact that the landfill ceased accepting waste prior to
17 the effective date of any closure regulations, so they
18 were not a permitted facility subject to our full
19 requirements.

20 MEMBER PEACE: They stopped accepting waste way
21 over 30 years ago, which is why it's important -- we're
22 working on these post-closure maintenance regulations now
23 that extend those financial assurances beyond 30 years.
24 But I thought these were for when you didn't know who the
25 responsible party was. We know who the responsible party

1 was.

2 BRANCH MANAGER WALKER: Consistent with how the
3 program has handled the matching grant portion, this
4 would -- cost recovery would not be applicable.

5 If we had identified responsible parties that
6 clearly were required to comply with solid waste facility
7 permit requirements, they would be subject to --
8 potentially subject to cost recovery. But since this is a
9 publicly operated site, pre-regulation site, it meets the
10 criteria for matching grant which cost recovery would not
11 be applicable.

12 STAFF COUNSEL LEVINE: This is Steven Levine. If
13 I could elaborate on that.

14 Basically it's a carrot, and what we do for public
15 entities, and it's an old closed site, never regulated or
16 permitted by us, we got different criteria, typically, for
17 that. But we offer a carrot to get these old closed sites
18 cleaned up. And if a public agency is going to step up to
19 the plate, avoid the need for a state to hire its own
20 contractors through the cleanup program and potentially
21 take on some kind of tangential liability, arguably, for
22 hiring its own contractors, have a city or a county step
23 up to the plate, hire the contractors, clean up the site,
24 put up half the money, even though -- and this is, the
25 city or the county is a responsible party. Clearly, they

1 are the owner and/or operator of the site. We have a
2 matching grant program. And that is the carrot and then
3 the grant is going to bestow the funds and so there is no
4 cost recovery when we are doing this matching grant
5 process.

6 MEMBER PEACE: I'm just thinking of old closed
7 landfills in the state. There's, like, 1756 of them.
8 Will we have enough money in this fund to correct them
9 all? So we'll never be asked for cost recovery?

10 BRANCH MANAGER WALKER: Board Member Peace, Scott
11 Walker again.

12 We have approximately 1500 closed illegal and
13 abandoned sites. They are primarily the old
14 pre-regulation closed sites. So we have gone through
15 those. And on any given time, they may pop up. Do all of
16 them require mediation? Not in our review. We've not
17 determined that. But will they continue to come up? Yes.

18 MEMBER PEACE: They were under an order years ago
19 and they didn't correct it and didn't correct it and then
20 they got fined. So, in essence, part of our grant is
21 going to pay the fine -- the Water Board. Well, in
22 essence it is, because they would have had that \$150,000
23 more to put into the project.

24 BRANCH MANAGER WALKER: Again, I think -- this
25 particular case, I think you do point out a relatively

1 unique aspect of this because in many cases in burn dumps
2 they don't have this level of regulatory agency oversight
3 and enforcement action.

4 And in this particular case, because of the
5 environmental problem associated with being -- the waste
6 being in Markley Creek, the Water Board has been very
7 aggressive and is providing the regulatory oversight.

8 In other cases, we bring burn dumps that would not
9 necessarily have that level of enforcement which is
10 necessary in terms of the agency with the oversight.

11 MEMBER PEACE: I just wanted to make sure that we
12 were not cleaning up the Sommersville-Gentry part of the
13 site, because they are a big developer, and we should not
14 be cleaning up their portion of the site.

15 MR. BOTAN: We will keep an eye on that, you know,
16 when they submit their payment requests.

17 CHAIRPERSON MULÉ: I just have one question for
18 staff. Is the Water Board contributing any funding to
19 this?

20 MR. BOTAN: I'm not aware of it.

21 BRANCH MANAGER WALKER: The Water Board is not
22 contributing any funding, but they are providing the
23 regulatory oversight, so they are going to make sure that
24 the project that's completed is -- meets regulatory
25 standards.

1 CHAIRPERSON MULÉ: And will we be providing any
2 oversight for this? Just the funding?

3 BRANCH MANAGER WALKER: We're not going to be
4 regulatory oversight, per se, because of the burn dump.
5 This is a burn dump. AB 709 requires either DTSC, Water
6 Board, or, if not them, us, to provide regulatory
7 oversight. And in this particular case, we are relying
8 primarily on the Water Board. But then again, our minimum
9 standards, we will ensure that they are consistent with
10 our minimum standards. But it's just, the Water Board has
11 to sign off and review, as a hazardous substance release
12 site, that everything is okay. And they are going to do
13 that.

14 STAFF COUNSEL LEVINE: And this is Steven Levine.
15 If I may add to that. We also will have grant oversight.
16 And so we will assure that the project is done consistent
17 with the project description, as Mustafe just said. The
18 project description is limited to the public agency-owned
19 land, and we will have the ability to have oversight over
20 that and assure that funding is only paid for that
21 purpose.

22 MEMBER PEACE: So the City of Antioch must pay
23 \$150,000 in fines, and I believe Sommers-Gentry had to pay
24 money in fines also. That went to the Water Board, but
25 they're not putting any money into the site, so they

1 collect the money. They collect the money and the fees
2 and we pay to have it cleaned up? Is that how it works?
3 We don't ever get any money -- the fees that they collect,
4 we never get any part of that to help offset what we're
5 paying to have done?

6 BRANCH MANAGER WALKER: I've never heard of that
7 type of a situation, but we do commonly get contributions
8 in one way or the other in projects. And I would just
9 like to point out, in this project, the match is a
10 relatively small portion of the whole project. So the
11 rest of that, as I understood, and the City of Antioch
12 can, you know, present, I think, it's on the order of
13 \$4.4 million cost. And so the city of Antioch is
14 providing that difference.

15 But as far as a fee, a violation or a fee, from
16 another agency going directly to us, I don't recall any
17 situation where we've done that before. But certainly, we
18 wouldn't rule out some type of contribution in terms of
19 monetary from another agency.

20 CHAIRPERSON MULÉ: But that's why I asked the
21 question about who is responsible for this project. So it
22 sounds like the contribution that the Water Board is
23 making is, they are going to be the oversight. They are
24 the primary as being in charge of oversight. So you can
25 then, in fact, you know, translate that into dollars and

1 what that would cost if we were to be the primary agency
2 in this in terms of oversight. So that's why I asked that
3 question is because I wanted to know who's going to be
4 responsible for this. So in effect, that's their
5 contribution.

6 Any other questions or comments on this one?

7 Do I have a motion?

8 MEMBER PEACE: I would like to move Resolution
9 No. 2007-237.

10 MEMBER DANZINGER: Second.

11 CHAIRPERSON MULÉ: Moved by Member Peace, seconded
12 by Member Danzinger.

13 Donnell, please call the roll.

14 EXECUTIVE ASSISTANT DUCLO: Members Danzinger?

15 MEMBER DANZINGER: Aye.

16 EXECUTIVE ASSISTANT DUCLO: Peace?

17 MEMBER PEACE: Aye.

18 EXECUTIVE ASSISTANT DUCLO: Chair Mulé?

19 CHAIRPERSON MULÉ: Aye.

20 Thank you. We'll put that one on fiscal consent.

21 We're going to take a five-minute break just to
22 give our court reporter a break, and then we'll be back
23 and we're really going to try to wrap up 7 and 8 before
24 noon, hopefully.

25 Okay. Thank you.

1 (Thereupon a break was taken in
2 proceedings.)

3 CHAIRPERSON MULÉ: I would like to call the
4 meeting back to order. And I would also like to recognize
5 that Board Member Peterson has joined us. Thank you for
6 being here.

7 And members, do we have my ex partes to report, or
8 are we all up-to-date?

9 Good. We're all up-to-date.

10 So let's move forward with Committee Item H, I
11 believe it is, Board Agenda Item 7.

12 Ted?

13 PROGRAM DIRECTOR RAUH: Yes, Chair Mulé.

14 I would like to call the Board's attention to a
15 memo which I sent you all, unfortunately, late, Friday.
16 So hopefully you had an opportunity and I think a copy's
17 been placed on the dais for you as well.

18 This item is to develop a contract for part of the
19 plastic grocery bag project. And the issue here is that
20 the staff's been toiling fairly -- I think we're closing
21 in on some successful conclusion, but it's been a tough
22 time for us. We've been working with two contractors,
23 UCLA and Sacramento State University here in Sacramento.

24 We had a proposal, which we presented to you on
25 the Board item, recommending at that time Sacramento State

1 University. We subsequently got a proposal from UCLA.
2 Material still continued to come in on that proposal over
3 the weekend. And we are now close to being able to finish
4 a review of that proposal. But in fairness to Sacramento
5 State, there are some differences. We want to make sure
6 that we can provide you a consistent evaluation tool of
7 both proposals so that you know which proposal would serve
8 your interests best. And so I'm requesting that we --
9 that the committee postpone this item, take it up at the
10 full Board. I realize the Board meeting is getting a
11 little crowded, but hopefully we can present this as a
12 very clear and concise item for you, well in advance of
13 the meeting.

14 CHAIRPERSON MULE: I don't think that any of us
15 have a problem with that, Ted. So that's fine with us.

16 We do have one speaker, but I don't know if the
17 speaker still wants to speak because we are moving the item
18 to the full Board.

19 Come on up, George.

20 MR. LARSON: George Larson, representing American
21 Chemistry Council and Progressive Bag Alliance. Not to
22 get in the substance of the agenda item itself as you are
23 busily evaluating contractors, but the last time this
24 issue was discussed, I believe it was Chair Reed Brown
25 directed staff to have communications with the authors'

1 office in order to clarify what the intent from the author
2 was.

3 And this has to do with whether or not all bags or
4 just regulated bags are going to the calculation. So if
5 that can be deferred to the full Board for discussion, I
6 would appreciate it.

7 CHAIRPERSON MULÉ: Absolutely. I believe that all
8 of that will be discussed at the full Board meeting. But
9 thank you for bringing that up. Appreciate it. Okay.

10 Let's move along to Committee Item I, Board Agenda
11 Item 8.

12 PROGRAM DIRECTOR RAUH: Yes, again, thank you
13 Madam Chair.

14 This is a request for rulemaking direction on
15 noticing revisions to the proposed regulations on
16 mammalian tissue composting for another 15-day comment
17 period.

18 Very briefly, there's one suggested language
19 change that's been provided which we believe enhances the
20 regulations and would allow an expanded time of research
21 very consistent with the Board's direction. But I think
22 that will enable us to ensure that any composting that's
23 done is effective. And for that purpose, we would like
24 your direction to re-notice the regulations with that very
25 minor change. If there are any questions about it, Robert

1 is here, Robert Holmes is here to answer any questions
2 that you may have.

3 CHAIRPERSON MULÉ: Good morning, Bob.

4 Do we have any questions for Ted or Bob here this
5 morning?

6 Everything looked fine with me, so I guess with
7 the Committee's concurrence, we could just move these
8 forward, if that's okay.

9 Board Member Peace?

10 MEMBER PEACE: If this is what staff really wants
11 to do. I have to tell you, this composting of mammalian
12 tissue, this really sounds really repulsive to me. And I
13 just hope this public perception of doing this doesn't
14 hurt the composting industry at all as we go through this.

15 And it did say something about doing some other
16 things that they could do with mammalian tissue when the
17 rendering plants can't take them all. Do you know if they
18 are working on, like, the mobile cremation units and stuff
19 like that?

20 MR. HOLMES: Member Peace, the item refers to a
21 multiagency, multidiscipline task force. It's about 67
22 members strong now. We are cochairing that committee with
23 the Department of Food and Agriculture. And so we're
24 looking -- one of the tasks of the committee is to look at
25 all of the disposal options and including those that are

1 mobile, that can be brought on site, when you don't want
2 to move the animals for whatever reason -- if they have
3 died from a disease and the state veterinarian doesn't
4 want to move them for fear of spreading the disease. So
5 we are evaluating all of those.

6 But the available and acceptable disposal options
7 that are available now are very, very limited. And so we
8 don't want to rule out any of those. We want to be able
9 to provide a menu of options that are available, because
10 conditions of emergency change, you know, based on the
11 condition, and we want to have every available option
12 available.

13 MEMBER PEACE: I was just curious. This says
14 unprocessed mammalian tissue. I was just thinking like
15 lately there's been recalls of like 20 million pounds of
16 beef, I mean, from China. Where does that all go? Does
17 that go to the landfill?

18 MR. HOLMES: The acceptable and proven technology
19 is still rendering. Most of the material is still going
20 to rendering but they are having trouble with their
21 capacity and the numbers of sites. So that has caused, as
22 we saw in the summer of 2006, problems. They just
23 couldn't keep up. They were just overwhelmed.

24 So depending on what the agent is, you know, if
25 it's, you know, drugs in the animals' tissue, it still can

1 be potentially rendered safely. The rendering process
2 will get rid of those items of concern.

3 MEMBER PEACE: Is this still basically composting
4 on site where the animals die?

5 MR. HOLMES: These specific changes -- these regs
6 do two primary things: One is, they allow for research,
7 for collection of research for additional scientific
8 information. So the Waste Board and CDFA can decide,
9 after we get that research, whether or not we want to open
10 the regs up further, on a permanent basis; secondly, they
11 allow during a declared emergency the allowance of these
12 temporary compost activities to help to recover from the
13 emergency.

14 CHAIRPERSON PETERSEN: I have a question. When
15 did we do -- what is anticipated to be done with the
16 finished product as compost? What would be the
17 applications? Or do we know yet?

18 MR. HOLMES: It's primarily a disposal issue.
19 It's a waste management issue. That question has been
20 asked, and the question that Member Peace asked as to what
21 affect might that have on the markets of other compost
22 activity and the responses that we're getting back is,
23 it's apples and oranges. We're not talking about it on
24 the same scale of volume.

25 CHAIRPERSON PETERSEN: I understand that.

1 MR. HOLMES: We're not talking about it as
2 necessarily a competitive action.

3 There are some concerns with respect to the health
4 and safety of that material and that's something, again,
5 that we're trying to address with this research
6 application.

7 In other words, if we're -- one of the concerns
8 that we have is mad cow disease, both on spongiform
9 encephalopathy. That's the reason we have the prohibition
10 in the regs in the first place. So the question is, does
11 the compost get rid of that and can -- will it still be
12 viable in the finished product when it's spread on the
13 field and then you have animal feeding on the field.

14 So those are things that we are trying to address
15 for the long-term application, and that's something that
16 we will, you know, discuss when and if the science shows
17 that it can be safe.

18 CHAIRPERSON PETERSEN: But also, it could be
19 composting just to eliminate the processing and then
20 landfill.

21 MR. HOLMES: Correct.

22 CHAIRPERSON PETERSEN: Thank you.

23 MEMBER PEACE: One more. Like I said, this all
24 kind of sounds yucky to me, but what is unprocessed
25 mammalian tissue? Is it, like, the whole carcass or is it

1 chopped up?

2 MR. HOLMES: The unprocessed is in the regulatory
3 language. And the idea behind that is, it's possible that
4 it could be already rendered material that then would be
5 composted. It would have already been treated in some
6 manner to destroy any pathogens. So at that point, if it
7 had already been treated, then it could be composted
8 legally, under the current definitions.

9 MEMBER PEACE: Treated is different than
10 processed. What's the difference between treated
11 mammalian tissue and processed mammalian tissue?

12 MR. HOLMES: That's the current language of --

13 MEMBER PEACE: Since you can't use processed
14 mammalian tissue --

15 MR. HOLMES: -- the text.

16 MEMBER PEACE: -- what's the difference between
17 treated and -- so what things can you use and what things
18 can't you use?

19 MR. HOLMES: We would just have to look at the
20 definition or look at the language of the text. The idea
21 is that, for example, the -- in a laboratory setting,
22 where the animal has been -- now we're getting into the
23 lunch hour. I'm going to change that line of thinking.

24 MEMBER DANZINGER: Change to that line of hearing.
25 Could you just speak in tongues or something?

1 MR. HOLMES: The concern is with pathogens and
2 spreading of disease. So the interpretation of the
3 enforcement agency working with the Waste Board -- to
4 identify what is meant by "processed."

5 But the concern is, going back to the statement of
6 reasons for the prohibition in the first place is the
7 elimination of the pathogens and the spreading of disease.
8 So if it can be determined that processing has done that,
9 then it would be allowable. But there is -- there are
10 other restrictions besides the Waste Board prohibition
11 through Food and Ag Code that don't allow it. So it's
12 not -- it's not just based on our oversight.

13 CHAIRPERSON MULÉ: Okay. So the direction is
14 clear, go out for the additional 15-day comment period.

15 PROGRAM DIRECTOR RAUH: Thank you, Madam Chair.

16 CHAIRPERSON MULÉ: Sure. Thank you.

17 Thanks, Bob, on your work for all of this.

18 As I mentioned, Items 9 and 10 will be heard at
19 the full Board.

20 Let's break for lunch. We can be back here no
21 later than 12:45. And we'll reconvene the meeting then.
22 12:45 p.m. Thank you. We'll hear Items 11, 12, and 13.

23 (Thereupon a break was taken in
24 proceedings.)

25 CHAIRPERSON MULÉ: Good afternoon, everyone.

1 We would like to reconvene the meeting of the
2 Permit and Compliance Committee.

3 Members, do we have any ex partes to report?

4 MEMBER PEACE: Up-to-date.

5 CHAIRPERSON MULÉ: Up-to-date?

6 Everybody's up-to-date. Good.

7 Donnell, would you call the roll.

8 EXECUTIVE ASSISTANT DUCLO: Members Danzinger?

9 MEMBER DANZINGER: Here.

10 EXECUTIVE ASSISTANT DUCLO: Peace?

11 MEMBER PEACE: Here.

12 EXECUTIVE ASSISTANT DUCLO: Chair Mulé?

13 CHAIRPERSON MULÉ: Here.

14 Okay. Let's move into the next item, which is
15 Committee Item L.

16 PROGRAM DIRECTOR RAUH: Thank you Madam Chair and
17 Committee Members.

18 I'd just like to take one break to recognize the
19 staff or actually several staff people. But as you know,
20 on Sunday, Sacramento Marathon International Marathon was
21 run. And I am holding here, just for your looks at it, a
22 participation medal, and we actually have -- I know at
23 least two members who participated -- our chief counsel,
24 just a shade over three hours, I understand his time was.

25 CHAIRPERSON MULÉ: Go, Elliot.

1 (Applause.)

2 PROGRAM DIRECTOR RAUH: Wait. Wait. Hold your
3 applause here. Right here is Bobbie Garcia. It was her
4 17th run in this marathon, 60th marathon overall.

5 CHAIRPERSON MULÉ: All right. Go, Bobbie.
6 Congratulations.

7 (Applause.)

8 CHAIRPERSON MULÉ: Elliot, I have been meaning to
9 ask you, have you ever done the Honolulu Marathon?

10 CHIEF COUNSEL BLOCK: I have not.

11 CHAIRPERSON MULÉ: I think you need to.

12 CHIEF COUNSEL BLOCK: And there's also one in
13 Maui, and they are on my radar.

14 MEMBER CHESBRO: And I should mention -- I asked
15 Bob this morning how he did and my friend Murray how he
16 did. Since he's not in the room -- he just made a face at
17 me. But I said, "Well, did you finish?" and he said, "Of
18 course." So Bob finished too. But he apparently wasn't
19 up to his usual time.

20 CHAIRPERSON MULÉ: But he ran. That's great.

21 MEMBER CHESBRO: He completed it.

22 CHAIRPERSON MULÉ: Good. Okay.

23 PROGRAM DIRECTOR RAUH: Thank you. What I would
24 like to do is in the Item 11, but also ask the committee
25 to take up both 11 and 12 at the same time.

1 Basically, what staff would propose that we do is
2 first present the results of the contractor report and we
3 have here to help us with that Paul Bailey and his
4 principal subcontractors. And the intention there would
5 be to focus, both for you and the members of the audience,
6 explicitly what is in the contractor's report, the
7 strength and value of that for the Board and making future
8 policy.

9 And we would like to move immediately into the
10 staff report and have the staff present its conclusions as
11 a result of participating with the contractor and the
12 advisory group in developing recommendations that we would
13 like to put forward for you for your consideration. And
14 at that point also, of course, at your pleasure, invite
15 members of the public to present their own comments.

16 But we feel if we do it in this order, that we'll
17 first have a clear understanding of the contractor's
18 efforts and then what the staff has learned from those
19 efforts. And we've tried to characterize those efforts in
20 areas of policy production for you to provide.

21 With that, I would like to turn over the
22 presentation to Bill Orr and also recognize up here Bernie
23 Vlach and Garth Adams and also Richard Castle who is the
24 principal staff author of the staff report.

25 And with that, Bill?

1 DIVISION CHIEF ORR: Thank you, Ted. My name is
2 Bill Orr. I'm the chief of the Cleanup Closure and
3 Financial Assurances Division.

4 And since I assumed that position back in June,
5 this has been one of the primary activities that I've been
6 engaged with. We have a great team. We've been on a very
7 aggressive schedule. We've really appreciated the
8 participation that we've had from our consulting group and
9 stakeholders because we're all in the same boat together,
10 trying to understand a very complex and far-reaching
11 subject.

12 What I would like to do to start off with is a
13 click.

14 (Thereupon an overhead presentation was
15 presented as follows.)

16 DIVISION CHIEF ORR: What I would like to actually
17 start off with is one of the banners down in the lobby.
18 And I think what we're really talking about here is the
19 legacy that we have in terms of landfills for the future.

20 One way to maybe look at the topics that we'll be
21 talking about in terms of the long-term financial
22 assurances and thinking about it maybe like a retirement
23 system for landfills. And some of the topics that we'll
24 be looking at might be more like an Individual Retirement
25 Account, or an IRA, where in an individual would put money

1 aside to make sure that they have enough money for their
2 future.

3 Another might be part of something like the state
4 where we have CalPERS that has money that we contribute
5 toward our retirement but it's part of a larger system.

6 Similarly, in Waste Management, we have a number
7 of landfills that are operated by landfill operators that
8 have more than one landfill.

9 And then finally, there might be another option
10 that would be more akin to the positive aspects of social
11 security, where operators or the state would contribute
12 toward a pool fund and it would be available for use in a
13 variety of activities.

14 And so while it's a very complex subject, I think
15 there's a lot of precedent in terms of our common
16 understanding of the kind of issues that we're looking at
17 in terms of retiring our landfills.

18 --o0o--

19 DIVISION CHIEF ORR: We're also talking about the
20 future. And as the staff report indicates, about half of
21 our landfills, of the 282 landfills that were operated
22 when the current closure rates went into effect back in
23 1988, half of those will be closed by 2009. In fact, on
24 January 1st will be the 20th anniversary, if you will, of
25 California's closure, post-closure program.

1 The first landfill under that program will be
2 beyond 30 years into post-closure maintenance in 2021.
3 And by the end of the century, unassured costs may reach
4 \$600 hundred million.

5 As we think about that, we've received a lot of
6 comments. Are those numbers too high? Are those numbers
7 too low? And it comes down to what kind of future might
8 we see and how we want to address that future.

9 One future that I will describe maybe is a Star
10 Trek future -- envisions a time when technology will solve
11 all of our problems. Landfills will stabilize and reach a
12 nominal custodial care situation. Accordingly,
13 post-closure maintenance costs will be significantly
14 reduced and then operators will continue to exist and be
15 solvent for the foreseeable future.

16 There's another future -- let's just call that for
17 a moment, the Mad Max future, where concerns regarding the
18 social and economic fabric of our society may be called
19 into question. When you think about it, our country's
20 been in existence for only about 200-plus years, and our
21 institution's somewhat less than that. So we're really
22 looking at a time frame that really approaches and exceeds
23 our experience. As I mentioned, so far we're only 20
24 years into our post-closure maintenance realm.

25 Under the Mad Max future, post-closure maintenance

1 and corrective action costs will skyrocket over time.
2 Landfills will not be able to be maintained or will not be
3 maintained. And that will further exacerbate the problem,
4 creating larger corrective actions and maintenance issues.

5 Let me just describe briefly a third future. And
6 that -- I don't have a good movie title for that one. But
7 I will just call it the prudent future, maybe the
8 sustainable future. And that really relies on the
9 experience that we have gained in the 20 years that we've
10 been doing closure, post-closure activities.

11 It relies on some tools that have been developed
12 by our contractor. There is an empirical basis for a
13 portion of it, but we don't have a method to determine at
14 which point in time and to what degree costs may escalate
15 or decrease over time. We only have 20 years' worth of
16 track record.

17 But at the same time, the Board's regulations or
18 modifications to those regulations, we believe, can go a
19 long way in terms of protecting the state's interests.
20 And so that's really -- that prudent future is what our
21 activities over the last several years, since 2003, has
22 been all about.

23 --o0o--

24 DIVISION CHIEF ORR: In 2006, Assembly Bill 2296
25 was enacted. And we're here to talk about, really,

1 partly, the outcomes of what we've done to pursue those.
2 As you know, Agenda Item 10 was put forward to the full
3 Board that deals with the regulations. So we'll be
4 considering that further, late this month.

5 In fact, today's the closure of the 15-day comment
6 period.

7 --o0o--

8 DIVISION CHIEF ORR: In addition, the Board was
9 required by January 1st to conduct a study to define the
10 conditions that potentially affect solid waste landfills,
11 and that includes several of the things I've already
12 alluded to -- the potential for long-terms threat to
13 public health and safety and the environment, the role of
14 technologies and engineering controls in mitigating those
15 potential risks, taking a look, a re-examination, of the
16 current financial mechanisms to see whether or not they
17 could protect the state over the long term, during an
18 extended post-closure period, and as a result, the
19 corrective actions.

20 --o0o--

21 DIVISION CHIEF ORR: It also calls for us to
22 consult with a variety of stakeholders. We formed a
23 consulting group of these stakeholders, and more, to help
24 us, advice us, as we move forward.

25 --o0o--

1 DIVISION CHIEF ORR: Now, in terms of the
2 subsequent requirements of AB 2296, by July 1st of 2009,
3 the Board is to adopt a second set of regulations and
4 develop recommended strategies legislation to implement
5 the findings of the study that's here before you today.

6 --o0o--

7 DIVISION CHIEF ORR: Today, specifically, as Ted
8 indicated in his introduction, we'll be looking at two
9 primary deliverables: One of them is the contractor
10 study, and the second one is the staff report.

11 --o0o--

12 DIVISION CHIEF ORR: This is a major milestone in
13 our process, but is really not the final end of the road.

14 We will be hearing about two very powerful tools:
15 The first one is a working model for a potential state
16 pooled fund; and the second is a proxy indicator tool that
17 is sort of a 30,000-foot assessment of the various issues
18 that might affect environmental health and safety at
19 landfills. So you will be hearing about those specific
20 things from the contractor today.

21 The contractor study, combined with the staff
22 report, together, combine to meet the requirements of AB
23 2296. Now, the staff report and the contractor study,
24 while they are a major milestone, moving on to the next
25 slide --

1 --o0o--

2 DIVISION CHIEF ORR: -- it's really not the final
3 answer.

4 So I think to the relief, hopefully of you Board
5 members that have been looking at the complexity of this
6 issue, as well as stakeholders that are still grappling to
7 get their arms around some of the issues that have been
8 raised by both documents, we're not looking for your final
9 decision today, but what we are looking for is feedback to
10 help narrow our efforts as we move forward.

11 --o0o--

12 DIVISION CHIEF ORR: Some people think that this
13 report is also a site-specific risk characterization or
14 site assessment. It's not that. And it's also not a
15 duplication.

16 It builds on the GeoSyntec report but it doesn't
17 redo the work that was done for that study a couple of
18 years ago. In terms of the approach for the staff report,
19 Richard Castle will be presenting a menu of policy options
20 and will be seeking your direction in terms of triaging
21 those issues on certain things that we can do now without
22 additional regulatory or statutory need.

23 Other items that we would continue to develop,
24 either in terms of potential regulation or statutes, and
25 items after our efforts to date, just don't seem to have

1 panned out. And so we would be seeking your concurrence
2 in not pursuing them further at this time.

3 So in terms of the presentation of the two
4 reports -- just click on to the next one --

5 --o0o--

6 DIVISION CHIEF ORR: -- we'll be starting off with
7 Paul Bailey from ICF International, and he will be ably
8 assisted by George Savage from Cal Recovery. That's one
9 of the primary subcontractors. And then that will be
10 followed up by Richard Castle, and as Ted indicated is the
11 lead author of the staff report.

12 MR. BAILEY: Board Members, agency staff,
13 distinguished stakeholders and guests, I'm pleased to be
14 here this afternoon to address you all.

15 Next slide, please.

16 --o0o--

17 MR. BAILEY: My name is Paul Bailey from ICF
18 International. I'm going to cover the major results of
19 the study and the outputs and offer a very brief but
20 hopefully exciting conclusion.

21 Next slide, please.

22 --o0o--

23 MR. BAILEY: Bill Orr presented the background to
24 this study, so I just have a couple of short comments. It
25 seems like only yesterday, but I guess it was in May when

1 I appeared before you all to introduce ICF and the team
2 and our qualifications and expertise and tell you that we
3 were really excited about the prospect of conducting the
4 study for you. And now, here we are, on schedule, with
5 the study being completed. And I'm really happy to be
6 here.

7 By way of background, we have fully met our
8 commitment to our disabled veterans subcontractor. And
9 our small business partner, Cal Recovery, took
10 responsibility for a major part of this study, as
11 proposed.

12 Next slide, please.

13 --o0o--

14 MR. BAILEY: So what did we establish? One of the
15 first tasks was to evaluate your existing financial
16 assurance mechanisms for post-closure maintenance and
17 corrective action.

18 And we looked at them in terms of the criteria
19 listed on the top of the slide, certainty of assurance;
20 the amount of assurance; liquidity, how easy is it to
21 quickly convert a mechanism into cash; and also the
22 administrative burden and costs of each of the mechanisms.
23 And I'm going to spare you going through all of these
24 items here. But this was one of the outputs of that
25 effort.

1 Next slide, please.

2 --o0o--

3 MR. BAILEY: We also were asked to take a look at
4 your current mechanisms in terms of potential extensions
5 and could they assure more money, longer. And in general,
6 we found the mechanisms themselves would require few if
7 any changes.

8 That's not going to be a major stumbling block if
9 you decide to move ahead with your programs.

10 We also were asked to take a look at annuities and
11 guaranteed investment contracts, commonly referred to as
12 GICs, as potential financial assurance mechanisms.

13 And these are very complicated insurance contracts
14 that are not typically used for financial assurance. They
15 are not standardized. They have penalties. They are very
16 rigid. And as a result, we could not recommend them as
17 potential new mechanisms for use in your program.

18 --o0o--

19 MR. BAILEY: We also did a series of work relating
20 to state-pooled fund analyses. We were asked to look
21 qualitatively first at possibly designs of a state-pooled
22 fund and what the options were of those designs.

23 And we did that. But really, you can only go so
24 far on theory. You have got to have some numbers to
25 crunch.

1 Second, we were asked to look at, okay, what other
2 experience have states had out there in pooled fund for
3 care of landfills? And we found very few precedents
4 across the country, and none at the scale that you're
5 contemplating here.

6 Third, we were asked to develop a working model of
7 a state pooled fund. And I'm going to come back to that.

8 But first I'm going to ask my partner, George
9 Savage to describe the work done on the proxy factors
10 tool. And we're doing it in this order because the state
11 fund working model does take advantage and use the results
12 of the work that George led.

13 MR. SAVAGE: Thanks Paul. Good afternoon, Madam
14 Chair and members of the Board and members of the
15 audience.

16 My name is George Savage. I am with Cal Recovery
17 Incorporated.

18 --o0o--

19 MR. SAVAGE: And as Paul indicated, we developed a
20 method of ranking landfills in terms of what their
21 potential risk is to the environment, and also that
22 translates into corrective action and post-closure
23 maintenance costs.

24 Wanted the model to be simple, so that was one of
25 the governing criteria. Potential uses of the model -- as

1 Paul indicated, one of the key uses was to support their
2 development of the pooled fund financial analyses.

3 It also could be used to characterize a landfill
4 universe. It can be used to set priorities. Essentially,
5 it's a tool that is relatively flexible.

6 --o0o--

7 MR. SAVAGE: This model that I'm going to describe
8 is not intended to be a specific risk assessment model.
9 You couldn't apply this to any particular landfill and
10 determine what the risks would be to humans, for example.

11 One of the scope of work items was to keep the
12 relative number of factors small, to keep the model
13 simple. We developed, again, according to the scope of
14 work, three criteria, or three levels of risk
15 uncertainty -- mainly high, medium, and low.

16 And another important point is, each of the
17 factors has to be supported one way or another by some
18 quantitative data and information.

19 --o0o--

20 MR. SAVAGE: Very early on in the study, we
21 developed an initial listing of proxy factors. We work
22 with the 2296 consulting advisory group as well as with
23 the Waste Board.

24 And ultimately, we came up with a list of 13
25 factors which are included in the report. I'm not going

1 to cover all of them. But what I would like to cover is
2 just the -- will be called the dominant factors that
3 ultimately were incorporated into the ICF financial
4 assurances modeling effort.

5 The first dominant parameter listed here is
6 rainfall intensity.

7 --o0o--

8 MR. SAVAGE: Then there were engineering controls
9 as things like the cap and the liner design. Permitted
10 capacity.

11 Next, please.

12 --o0o--

13 MR. SAVAGE: Hydrogeology, mainly for example how
14 far to state ground waste; proximity to urban areas.

15 Next.

16 --o0o--

17 MR. SAVAGE: I think those are the five.

18 And then there were another eight parameters that
19 were also used in our analysis in terms of developing
20 waiting factors.

21 For each of the 13 factors we had a scale of zero
22 to ten, and we weighted those according to what we thought
23 the relative importance would be to estimating corrective
24 action costs, for example.

25 The total maximum score that a landfill could

1 achieve that's -- this would be the landfill -- the quote,
2 unquote, landfill of greatest concern or highest risk --
3 and this is on a relative basis, by the way. This is not
4 an absolute basis -- would be a hundred points.

5 Because of the way the scoring developed, the low
6 risk, low concerned landfills would score in the areas of
7 16 to 35; medium risk, 36 to 69; and then the highest risk
8 landfills, those are the highest concern would fall into
9 the 70 to 100 points.

10 Since this was an initial attempt to develop a
11 scoring system as well as prioritize some of the
12 parameters and develop weights, we also did an estimate of
13 the risk, because this is an exact science so we estimated
14 that scores are probably accurate to within plus or minus
15 10 to 15 percent.

16 And I think that's it.

17 Next, please.

18 --o0o--

19 MR. SAVAGE: Back to you, Paul.

20 Thanks a lot.

21 MR. BAILEY: Now I would like to talk a little bit
22 about the state pooled fund working model. This is a pool
23 for testing a variety of scenarios. It's a simulation
24 model. It's not a predictive model. We're not predicting
25 what the world will look like in 200 years. We're not

1 even predicting what the world will look like in ten years
2 or five years. But the tool will let your staff do a
3 variety of what-if analyses. What if things move in this
4 direction?

5 Bill described some mega scenarios. The whole
6 point of the tool was -- and this is what you asked for --
7 to give you the ability to test a variety of scenarios.
8 We don't claim that the tool will enable you to predict
9 the future.

10 From the beginning, we designed the tool to allow
11 changes to the inputs and the assumptions, recognizing we
12 have to start with something. You can't build a tool with
13 nothing. But that various stakeholders, whole different
14 positions -- and we want the tool to enable you to respond
15 to those points of view.

16 Also, hey, there is so much uncertainty in this
17 area that we designed the tool using Monte Carlo
18 simulation to be able to address all sorts of
19 probabilities, so that the tool might, in some runs, find
20 several large corrective actions occurring in the same
21 year, and in other runs, not.

22 And in this sense, the pool will give you a feel
23 for what the distribution of outcomes might look. And
24 then that gives you the ability to say, okay, how risk
25 averse do you want to be?

1 We take advantage of the dominant proxy factors
2 that came out of the work that George led with your staff.
3 We built it on a 2003 Excel spreadsheet model, because
4 that technology is the most widespread. And in the final
5 report, we've included some of the results of our test
6 case. And, you know, I want to emphasize that the test
7 case is just that. We weren't asked to produce the
8 answer. But we had to be able to determine, is the model
9 working? So that's why there is a test case that we think
10 is a reasonable starting point, but it's not in concrete.

11 --o0o--

12 MR. BAILEY: What drives the model? What drives
13 the model is supply and demand. And the demand for funds
14 depends on when post-closure maintenance and/or corrective
15 action occurs, how often, and the duration.

16 And since we were asked to develop this model so
17 that it could look at what if the pooled state fund only
18 covered defaults, failures to perform post-closure
19 maintenance or corrective action, that's a key driver of
20 the demand for funds.

21 On the supply side, looking at supply of money
22 into the fund, primarily coming from some sort of
23 assessment on tip fees. So how much that surcharge rate
24 is and quantities of solid waste disposed is another key
25 driver.

1 Next slide, please.

2 --o0o--

3 MR. BAILEY: Now, all of these items that we're
4 talking about are, again, the drivers themselves are
5 subject to uncertainty. And there were questions about,
6 you know, the scope. So while the test result looks at
7 all PCM, both the first 30 years as well as thereafter,
8 the model can be easily adjusted so that you only look at
9 post-30 PCM.

10 Or if you wanted to say, what would it cost us if
11 we just dealt with corrective action and not consider
12 post-closure maintenance? The model can easily do that
13 for you as well, because it was all built in.

14 I apologize for the small print.

15 Another one of the comments we got from the
16 consulting group had to do with, well, the cost of
17 post-closure maintenance. Do we think they are higher,
18 low, do we think they are going to change? Bill described
19 some of those concerns.

20 So the capability to run those scenarios is built
21 into the model. It's not that the model has fixed on a
22 certain level of assumed post-closure maintenance costs.
23 You can put in what you believe makes the most sense.

24 The model also dealt with the uncertainties
25 regarding the supply of money into the fund, how much

1 waste, solid waste, is going to be disposed in the future.
2 Is it going up, going down, staying the same?
3 Demographics? Your programs? We don't know exactly what
4 the future will hold. So the model enables you to run
5 different scenarios regarding the quantities of waste
6 disposed. Because if there's less waste disposed and
7 there's still need for money, then the surcharge rate
8 would have to go up.

9 So a model has a lot of capability to examine
10 different scenarios for you.

11 --o0o--

12 MR. BAILEY: Some questions have come up about,
13 gee, is this model just an amalgamation of assumptions and
14 theory that's totally divorced from reality? We hope not.
15 And, in fact, there's actually quite a lot of empirical
16 data in the model more than you'd typically find in most
17 models of this sort.

18 So for example, on the demand for funds, we used
19 the data in your SWIS database to simulate when landfills
20 would close, because that would start the post-closure
21 period. And we used the cost estimates that the landfills
22 have submitted for assuring their post-closure maintenance
23 cost in the model as well.

24 We also used the cost estimates, and, admittedly,
25 there are fewer, regarding corrective action.

1 And we looked at experience in Minnesota -- this
2 is an area where there's some data, but not as much as we
3 certainly would like -- with respect to how often
4 corrective action might occur, how frequently. There's no
5 good empirical data. And therefore, we really have to
6 rely on assumptions. But assumptions that are easily
7 changed if someone wants to take a look at the
8 implications of a different set of assumptions.

9 Finally, a driver is default rates. How often
10 will operators not perform their obligations with respect
11 to corrective actions or post-closure maintenance? We
12 have lots of good data on private sector defaults. We
13 don't have a lot of good data on public sector defaults,
14 so again, we have to make some assumptions.

15 Next slide, please.

16 --o0o--

17 MR. BAILEY: I mentioned the supply fund and
18 disposal quantities are test-cased, based on current data
19 and trends. So we're using what data we have there.

20 And the landfill population itself, the 282 that
21 are subject to the financial assurance requirements, you
22 all had quite a fair amount of data in SWIS, very few data
23 gaps. And we maintain the integrity of that data, which
24 is described in the report. And it would kind of take me
25 too long to explain here. But we really made an effort to

1 take advantage of and not alter the existing data that we
2 could use.

3 --o0o--

4 MR. BAILEY: This slide shows you landfill
5 characteristics used in the model. And I think it's
6 self-explanatory. You can see the five dominant factors
7 that George was describing as well as some of the items
8 that I just mentioned.

9 --o0o--

10 MR. BAILEY: Where do we have to use assumptions?
11 Corrective accuracy, frequencies, and magnitudes. We had
12 to use assumptions. And default rates for public sector
13 entities.

14 --o0o--

15 MR. BAILEY: How did we handle corrective actions
16 in the future? Well, we worked with the staff and came up
17 with what we believe is a reasonable scenario. And we
18 divided landfills into three categories -- small, medium,
19 and large and similarly divided corrective actions into
20 low cost, medium cost, and high cost; high cost being
21 primarily groundwater contamination treatment. And you
22 can see, for each category of landfill, more small, fewer
23 medium, fewest high. Small landfills are the smallest
24 number of anticipated corrective action. Moving up, large
25 landfills would have the highest.

1 So we had added the scientific logic to it, but is
2 this what the future will hold? We don't know. It's our
3 best guess. We've had some comments saying that, gee,
4 this seems -- these numbers seem too high.

5 But keep in mind we were looking at a period of
6 240 years. So if we divide those numbers by 240 years,
7 you start to get a sense of, on average, a large landfill
8 might have a corrective action, of any kind, every eight
9 years. Might have a high cost corrective action every 60
10 years.

11 Take a look at the small landfills. High cost
12 corrective action every 120 years.

13 So in this perspective, it seems reasonable, but
14 reasonable minds can disagree.

15 --o0o--

16 MR. BAILEY: The other area where we did not have
17 good data is public sector defaults. So we did our best
18 and extrapolated from private sector. And we also got
19 some comments from the consulting group that encouraged us
20 to show default rates that might reflect the size of the
21 entity responsible for the landfills. And so we did that.

22 We had suggestions to have event-driven defaults
23 so that if a landfill is simulated to receive a high cost
24 corrective action, it might have doubled the probability
25 of default. So we tried to come up with something

1 reasonable, all of these can be adjusted. But they are
2 important drivers.

3 --o0o--

4 MR. BAILEY: Finally, we were asked to help
5 develop an insurance product that would cover any gaps in
6 coverage, either by your current mechanisms and/or state
7 fund, and to take this out to market and see what the
8 reaction might be.

9 And there are quite a number of possible sources
10 of gaps and what we wanted and what -- I wrote the
11 endorsement to really provide a secure safety net, not a
12 safety net with lots of holes.

13 Next slide, please.

14 --o0o--

15 MR. BAILEY: The insurers were less than excited
16 about this opportunity. And while we had hoped that
17 perhaps a contract in the five- to ten-year range might be
18 acceptable to the market, they were thinking maybe one to
19 three years. Their underwriting costs were ten times they
20 said what we estimated in the report.

21 They had concerns about providing an all-risk
22 policy, one that didn't have potential holes in it. And
23 they were unhappy with giving up the right to void
24 coverage.

25 In all, we did not get a positive response. We

1 went back to them at the suggestion of one of the members
2 of the consulting group to say, well, what if we put
3 limits of a hundred million per site with a 10 million
4 deductible? And unfortunately, we did not get a positive
5 response to that.

6 So I'm not sure there's much further you can go
7 with the insurance concept at this time.

8 --o0o--

9 MR. BAILEY: And here we are. It's December. You
10 asked us to evaluate the mechanisms. We did it.

11 You asked for a proxy factors tool. We did it.

12 You asked for some research on state pooled funds
13 and to develop a working model. Yes. Done.

14 And you wanted an insurance product defined that
15 had met your needs and to see what the market response
16 was. We did that too.

17 And so in conclusion, and I was asked to come up
18 with a real zinger of a conclusion, well, I don't have
19 one. But I will say, it's been a pleasure working
20 together.

21 Thank you.

22 And I guess -- I'm not sure exactly how questions
23 or comments -- they are coming later?

24 DIVISION CHIEF ORR: I think we're going to go to
25 Richard next, and then we'll open it up for comments.

1 CHAIRPERSON MULÉ: Thank you, Dr. Bailey.

2 Richard?

3 MR. CASTLE: My name is Richard Castle. I'm in
4 the Financial Assurances Section. And I don't think I can
5 follow Paul quite as energetically as he was, but I will
6 try not to put anybody to sleep.

7 If we can just go right on to the next slide,
8 please.

9 (Thereupon an overhead presentation was
10 presented as follows.)

11 MR. CASTLE: Bill came up with this when we first
12 started talking with all the workshops. And that little
13 Celtic knot is really what we are all dealing with here is
14 that it's quite a process to go through all these things
15 and it is also tying together our plans, our cost
16 estimates, and the financial demonstrations. And if you
17 think of the knot as the assurance to the state that these
18 facilities will be taking care of in the future.

19 --o0o--

20 MR. CASTLE: I am here to talk about the financial
21 assurances study as the staff portion for that study.

22 I have a lot of slides here, which I have very
23 little to say on each one. But putting it together, I
24 didn't know how to pare it down much.

25 --o0o--

1 MR. CASTLE: As has already been identified, the
2 study actually was broader than just the AB 2296
3 requirements. ICF's study was taken care of and also
4 we -- which you just heard, and we have -- this item is
5 going to talk about the request for direction. We have
6 that first little bullet, application of new requirements
7 to closed landfills. As we were resolving all of these
8 issues, how we wanted to ask you to go forward, we
9 realized that with almost half of the facilities closed at
10 this point, we have consideration that we're going to need
11 your direction on, very specifically, is on whether or not
12 to grandfather facilities either into benefits of whatever
13 might be developed or out of the expenses of whatever
14 might be developed, because they are already closed. So
15 there's no more revenue coming from a number of these
16 facilities.

17 --o0o--

18 MR. CASTLE: So with that -- actually, I just said
19 that. We have benefits from some proposals and we are --
20 we have some newly created financial requirements -- might
21 come from others.

22 --o0o--

23 MR. CASTLE: Some of the benefits would be such as
24 the pooled fund. If the Board developed such a pooled
25 fund, there could be a very useful source of revenue for

1 facilities.

2 A discussion earlier today with closed illegal
3 abandoned sites. I mean, you've got sites that are out
4 there that have no ability to have a resource. If we
5 develop such a fund, this is one possibility for these 282
6 that we might want to use that fund for. Obviously, the
7 Board would have discretion to tell us to use it for
8 everything that's out there. But that's not what we're
9 requesting at this point.

10 Also, the expenses of that post-30 financial
11 assurance demonstration, regardless of whether a fund
12 might be developed, if we go out and tell every landfill
13 that has been within our purview since January 1st, 1988
14 that you now have to demonstrate to us additional
15 financial assurances, that's going to be difficult for
16 some of the operators.

17 Some facilities, the owner operator is still a
18 viable operating entity. So it's not going to be such an
19 issue.

20 But others, that was their one operation. And
21 now, they are just in maintenance mode of that closed
22 facility.

23 Some of the other things that we've obviously been
24 discussing are the corrective action issues for non-water
25 quality related reasonably foreseeable corrective actions.

1 A closed facility is already under the control of the
2 regional board, whether they have or don't have a
3 financial demonstration for reasonably foreseeable
4 corrective actions for water-related issues, which we will
5 need to discuss further and get direction from you whether
6 we should impose a non-water quality related financial
7 demonstration.

8 Next slide, please.

9 --o0o--

10 MR. CASTLE: In the last month or so, actually, we
11 came up with a lot of discussion on a new, relatively new,
12 topic here, which is fund as you fill. It's kind of
13 interesting as a side note to the study and all the
14 discussions to the study. But basically, what we're
15 talking about is the potential to have the plan identify
16 phases of operation.

17 In the past, the closure plants have been allowed
18 to be either for the entire facility or for specific cells
19 and the most expensive portion of the facility ever
20 operated was what they have -- the operator is required to
21 develop the plan for, for review and approval.

22 This phased process has been discussed in much
23 more detail recently which the operator might -- if we
24 were to go forward with that, the operator could present
25 the next phase of operation, not necessarily a certain

1 number of cells, but potentially a time of operation. And
2 we've thrown out five years because five years is the
3 permit review process cycle.

4 So if an operator were to define their next five
5 years worth of use of the facility to match the permit,
6 the financial requirements we'd match to that same cycle
7 and it could be controlled under either a modified permit
8 or a permit condition.

9 The catch there obviously is that we -- at the
10 board, you concur on the LEA's permit. So this is not
11 a -- it's not a Board's permit, so the LEAs would have to
12 be willing to go forward with that. The operators would
13 have to be willing to define that clearly so that we knew
14 what that plan encompassed, what the financial assurances
15 were for so they could be reviewed in conjunction with
16 that. And it would all need to be balanced because
17 obviously as soon as this discussion came up, there were
18 comments from both sides. "I don't want to give up my
19 right to the entire facility from the operators," and
20 it's -- you have an asset by the full facility, so you
21 have a liability that goes with that facility. We were
22 looking at it mid-ground that possibly they could have the
23 entire site permitted. However, there would be checks in
24 that permit so that if conditions were met each five-year
25 cycle, or whatever the cycle is determined to be under

1 this modified or modified permit or a permit condition,
2 then they could go forward into the next phase of
3 operation. So it was a balance.

4 Next slide, please.

5 --o0o--

6 MR. CASTLE: Bernie came up -- Bernie Vlach,
7 Branch Manager, came up with this slide to try to
8 represent to you what was a lot of discussion. But
9 essentially, what it would be is that the dollars signs on
10 the left-hand side, a facility that had permitted the
11 entire site and presented a plan for the entire site would
12 have to present financial assurances for the entire site,
13 which would be essentially the entire height of the
14 coverage on the left-hand side -- the dollar amount would
15 be fully to the top left-hand corner for the entire life
16 of the facility.

17 The caveat there would be is if they had a trust
18 fund or an enterprise fund they were building up, they
19 build it up as these -- the letter of credit would be for
20 the entire surety bond, the entire amount.

21 This graphically would represent a closer
22 representation to what their actual costs might be as they
23 move along.

24 Again, of course, they would have to be -- they
25 have the ability to control that so that we can represent

1 to the public and to the U.S. EPA that we were not outside
2 of the federal requirements or our own requirements.

3 Next slide, please.

4 --o0o--

5 MR. CASTLE: One of the issues that we think we
6 can definitely implement now would be to work closer with
7 the state board and regional board in gaining compliance
8 with the current requirements for water quality-related
9 financial assurances for reasonably foreseeable corrective
10 actions.

11 We've been working with the state board and the
12 regional boards for a number of years, already. And even
13 though as you will see in -- if you have read the ICF
14 report, there's a very limited compliance with that.
15 That's actually improved a reasonable amount in the last
16 few years as we've been working with the different
17 regional boards to get on base with that.

18 The problem being is that it's their requirements,
19 and we're assisting them in obtaining that financial
20 demonstration.

21 The other part of that is that a number of
22 operators have identified cost estimates and post-closure
23 maintenance estimates. And they believe they have already
24 met the requirement of the regional board, and we have to
25 flesh that out, more fully, with the regional boards also.

1 But we're going to be asking them obviously that we
2 increase those efforts.

3 Next slide, please.

4 --o0o--

5 MR. CASTLE: What we do need to continue to
6 develop is -- one of the items you would have heard today
7 which can be heard at the Board meeting is the Phase 1
8 regulations. In the process of that, obviously, as you
9 are aware, we had to pull some of the items from Phase 1
10 that were originally there, which would be the
11 post-closure maintenance cost estimate contingency, at
12 least the prospect of that, whether it ends up being
13 20 percent or some other number. It's one of the items
14 that's been moved from Phase 1 into Phase 2.

15 We also had an item in the Phase 1 regulations
16 that was requesting -- not requesting -- requiring
17 as-built costs to be submitted back to the Board. So we
18 want to continue that concept so we have a very -- a
19 better opportunity to see what the actual costs are at the
20 facilities. And then we had a number of insurance
21 amendments to try to tighten up the use of that mechanism.
22 And we've had to move those to the Phase 2.

23 So we're looking to make sure those get back into
24 Phase 2 or make sure they are in Phase 2. There are items
25 in there for improvements to the pledge of revenue and a

1 number of other items -- actually, I'm going to discuss
2 these further along.

3 So next slide, please.

4 --o0o--

5 MR. CASTLE: I just talked about these.

6 The improvement to the pledge of revenue, we
7 really need to look much more thoroughly at what ICF is
8 identifying as their fault. He had it up on the -- I
9 believe he put a slide on there, about the ratings of each
10 of the mechanisms. And essentially, the pledge of revenue
11 agreement, which we have never had a problem with, and we
12 feel all of the legal office of the Board and each of the
13 local jurisdictions that has a pledge of revenue have very
14 thoroughly gone over those agreements that are contracted
15 between the Board and that local entity.

16 We feel they are pretty strong. But we're going
17 to look specifically at their comments that they have made
18 and we want -- we don't want to just ignore it. We want
19 to go forward and if there's an area to improve it, we
20 will recommend that to you, to the Board, for improvement.

21 --o0o--

22 MR. CASTLE: Workshops to discuss options
23 regarding access to post-closure maintenance
24 demonstrations. However we might extend financial
25 assurance demonstrations, whether we add additional --

1 require the operators to add additional funds to the
2 demonstration, so that they could essentially be a
3 perpetual fund, or whether we have them hold it at a
4 30-year financial demonstration until they can actually
5 identify their costs have gone down -- time has gone down,
6 so we know the end of the cycle is reached, or whether we
7 allow them access to those post-closure maintenance funds
8 for a certain amount of time, whether they're five years
9 into it, 20 years into it, and maintain some base amount
10 in perpetuity until -- I'm sorry, I shouldn't use the word
11 "until" -- they can demonstrate there's no threat from a
12 site. All those are policy considerations that we want to
13 further workshop and find what is going to be the best
14 balance for us.

15 Next slide, please.

16 --o0o--

17 MR. CASTLE: Graphically, the increased
18 demonstration would be, if we were to ask an operator to
19 require them to give us a demonstration of 41 times, 11
20 times -- 11 years longer than what they do now for
21 post-closure maintenance. It would be a very secure
22 assurance to the Board that should the operator fail to
23 perform post-closure maintenance, we could take the fund
24 from that assurance mechanism and the Board invest in a
25 surplus money investment fund. Any money we would get in

1 that situation, the rates that we would get with our
2 crystal ball, which, again, we don't have a crystal ball,
3 but our best efforts using inflation and interest
4 earnings. We would need instead of 30 times the annual
5 cost estimate, we would need 41 times the annual cost
6 estimate to create a fund that the principal value would
7 not be attacked during post-closure maintenance. We could
8 live off the interest.

9 That same fund, if it was a cash value, like a
10 trust fund or an enterprise fund, the operator could use
11 the interest into perpetuity, also, to maintain the
12 facility and not touch the capital that's invested.

13 Next slide, please.

14 --o0o--

15 MR. CASTLE: If we were to hold the funds at 30
16 years, we obviously could extend the post-closure
17 maintenance assurance significantly. The operator would
18 be able to use interest from the fund but have to maintain
19 a 30-year balance in it, which would help offset their
20 post-closure maintenance costs should they fail, and that
21 fund is still going to last for a number of years, even
22 invested at this net rate, well beyond 30 years, but not
23 perpetually.

24 Next slide, please.

25 --o0o--

1 MR. CASTLE: That third option would be allowing
2 access to the fund over some period of time. It shows
3 they are about halfway for 15 years, but it doesn't
4 matter. That could be moved under policy, wherever we --
5 the Board decided to direct us. And we would say, the
6 floor is a five-year value or a ten-year value or a
7 twenty-year value, whatever it might be. That would allow
8 the operators access to the money as well as to the
9 interest. It would maintain an assurance until the site
10 no longer posed a threat. However, it wouldn't be
11 forever. So those last two not being forever still gives
12 credence to --

13 Next slide, please.

14 --o0o--

15 MR. CASTLE: To the next idea, which is whether or
16 not we should have a pooled fund. Also, all of those
17 items have a consideration of whether we should have a
18 contingency applied to the post-closure maintenance
19 estimates. Both the plus-11 or the pooled fund-only
20 situation there maybe not be any need for a contingency on
21 the post-closure maintenance estimates, but if we have
22 anything where we're maintaining some value to the fund,
23 that contingency could be very valuable to making sure the
24 assurance is more in the Board's favor.

25 Next slide, please.

1 --o0o--

2 MR. CASTLE: One of the other things we want to
3 continue to develop is a requirement for non-water
4 quality-related corrective actions. Those items, we --
5 basically, in the ICF report, there's a definition of what
6 is post-closure maintenance, what is corrective action.
7 And we as the working group with staff, including the
8 Water Board staff, worked on those definitions for ICF so
9 they knew what we were talking about.

10 When we mention post-closure maintenance or
11 corrective actions, it's not just the Water Board's
12 definition or Subtitle D's definition of what corrective
13 action is. And an idea of what non-water quality-related
14 corrective actions would be, would be cap repair that's
15 not in the post-closure maintenance plan. It's not
16 planned.

17 So if there was an earthquake and the cap tore,
18 that wouldn't be the normal maintenance to the site, but
19 it's got to be repaired. Because if it's not repaired,
20 there's going to be intrusion to the fill. The cost of
21 that would be a corrective action, installation of a new
22 gas collection system. The facility might have been
23 closed without a gas collection system because it
24 wasn't -- didn't have a problem. Something in the future
25 could happen, the cap drainage system problem to introduce

1 enough fluids into the landfill that gas is now being
2 produced. So something that was not planned, like a gas
3 collection system, might need to be installed.

4 Additionally, a drainage system repair, we've
5 already had just in the closure of BKK a completely
6 unexpected repair of a drainage system there.

7 So these aren't unreasonable, but they are not
8 included in the normal post-closure maintenance estimates.
9 And the little statement on the bottom said, even with
10 ongoing maintenance, anticipation of additional repairs
11 and maintenance above and beyond those scheduled items is
12 definitely reasonable to consider.

13 Next item.

14 --o0o--

15 MR. CASTLE: The pooled fund assurance for ongoing
16 maintenance beyond 30 years of post-closure maintenance,
17 there's a number of ways we can look at that. And these
18 are all things that we want to continue to develop and
19 we're asking you to let us keep looking toward workshops
20 for -- it can be a second level of assurance. If we have
21 the operator who's in business, they have a financial
22 demonstration with us, and we have a pooled fund, the
23 Board and the State -- depending on how everything is put
24 together, the Board and the State are pretty well-assured
25 that the site's going to be maintained.

1 That pooled fund could become the primary
2 assurance that the facility will be maintained, and that
3 would be if the operator is still in business but they
4 don't have a letter of credit or they don't have a means
5 with us, but the pooled fund is sitting there, saying, if
6 the operator fails to do what they are supposed to do, we
7 have a state resource that we can go to, the operators
8 have paid into it.

9 A third way to look at the pooled fund could be
10 that it could be the actual funding source. We could
11 allow the operators to use their current 30-year financial
12 demonstration, and then the pooled fund would have to be
13 designed to, you know, to step in and actually take over
14 the maintenance of the facilities. So obviously each one
15 of those have implications as to how large that pooled
16 fund is going to be, and the last one being a very large
17 pooled fund, not the one that was in the test case from
18 ICF.

19 The use of the scoring model goes in with the
20 pooled fund. We want to look into further use of it as
21 assistance and estimating corrective actions throughout
22 the state.

23 Also, we want to use it for policy consideration
24 on how we're going to -- if a pooled fund is developed,
25 how to set fees. It would definitely be a policy

1 consideration whether differential fees were charged to
2 facilities, based on whether they were a low, medium, or
3 high rated under the scoring matrix.

4 And then if a pooled fund of limited resources is
5 put together, that same scoring could be used for who's
6 first in line for any potential payments from the fund.

7 Next slide, please.

8 --o0o--

9 MR. CASTLE: So more items to workshop, as you can
10 see, there's a lot of detail that we still have to do.

11 One of the quotes that Bill brought up earlier in
12 our workshop, not today, but in the recent past, was that
13 this is not the end of this process. It's only the end of
14 the beginning. We have a whole slew of things that we
15 feel we need to go forward with to get them resolved. And
16 these post-closure maintenance costs, corrective action
17 costs, both post-closure maintenance, corrective action,
18 whether it's grandfathered, all of these are things to be
19 workshopped.

20 Next slide, please.

21 --o0o--

22 MR. CASTLE: How we get the resources, that
23 definitely needs discussion. And we'll bring back
24 recommendations to you. But we'll need your input. And
25 there's going to be policy considerations on what happens

1 here.

2 But how rates are set will also impact how the
3 flow of waste in the state moves and possibly it moves out
4 of the state. And that's something to be considered.

5 And as technology improves at facilities, and the
6 waste is not disposed, where is the fee to keep the pool
7 fund going to come from?

8 Next slide, please.

9 --o0o--

10 MR. CASTLE: Issues that require additional
11 authority are, if we were to have a direct non-water
12 quality-related corrective action requirement in our
13 regulations, we feel that might need some -- we'll have to
14 look into that further, about having statutory authority
15 for that.

16 And obviously, if the Board chooses to accept the
17 statewide pooled fund, we'll need authority for that.

18 Next slide, please.

19 --o0o--

20 MR. CASTLE: As has already been suggested, these
21 are the things that we don't feel we want to go forward
22 with. Annuities and GICs, guaranteed investment
23 contracts.

24 While they are very good for very clearly defined
25 needs, we're looking at something that's well beyond 30

1 years. And whether it's 35 years or 55 years or 105
2 years, we just don't know that so it would be very
3 difficult to use these items.

4 The umbrella insurance, as Paul has said, we're
5 not getting much positive at all back from the insurance
6 companies about that idea.

7 And then what has come up again recently, and
8 actually it comes up on numerous occasions, is the use of
9 the federal requirements for defining the period of
10 post-closure maintenance and mirror -- making a mirror
11 image of the federal requirements and the state's
12 regulations. Staff's opinion of that, would be that we
13 would be stepping backwards, not forward.

14 The burden of proof for the reduction of the
15 threat on the facility is on the operator right now. They
16 can step forward and say, "My site poses less threat," or,
17 "My site no longer poses threat to the environment." And
18 with the review of all the agencies, we can agree with
19 that.

20 And under our view of how the subtitle D program
21 would work, if we were to implement it specifically, the
22 State would be required to define the post-closure
23 maintenance period. Under the federal program, it's
24 defined as 30 years, and the authority is given to the
25 state director to increase or decrease that time period.

1 And we feel we're in a better position with the current
2 statute and regulation that we have.

3 Next slide, please.

4 --o0o--

5 MR. CASTLE: We have a number of workshops and
6 other items proposed. February, we're hoping to come back
7 for a pooled fund model scenario workshop. March, we are
8 hoping to come back for informal workshops for the Phase 2
9 rulemaking. In the May-June timetable in 2008, we expect
10 to be before you requesting direction for the Phase 2 rule
11 making. That would give us a good timetable to be adopted
12 before July 1st of 2009, which is required by 2296. And
13 then also that May-June timetable through July 1st of '09,
14 we would be able to make our recommendations to you for
15 additional statutory authority.

16 Next slide, please.

17 --o0o--

18 MR. CASTLE: This list -- obviously I'm not going
19 to leave it on this page because it's just too much stuff
20 for one screen. That's all of the things I just got
21 through discussing. That's the beginning of the next
22 phase that we need to go forward with.

23 Next slide.

24 --o0o--

25 MR. CASTLE: What we want to implement now would

1 be the closure fund-as-you-fill process and water-quality
2 related reasonably foreseeable corrective actions, just
3 kind of ramping that up.

4 Did you want to say something, Bill?

5 Next slide.

6 --o0o--

7 MR. CASTLE: What we want to continue to develop
8 is this list of items here, which basically this is
9 workshopping things and beginning Phase 2 rulemakings.

10 And the next slide --

11 --o0o--

12 MR. CASTLE: -- is what we do not feel we need to
13 pursue further.

14 That's the end of my presentation.

15 Thank you.

16 CHAIRPERSON MULÉ: Great. Thank you, Richard.

17 Before we go any further, I would like to
18 recognize Chair Brown. Thank you for being here. I know
19 how busy your schedule is, so thank you for being here.

20 Let's do this. We have several speakers. I have
21 a whole pile of speaker slips, so I think probably the
22 best thing for us to do is to hear from our speakers.
23 Then we'll take Q&A from the -- from my fellow Board
24 members.

25 I would just want to ask the speakers that is, you

1 know, you address the issues that we're here to discuss
2 today, you keep your comments as concise as possible and
3 try not to reiterate what the previous speakers had
4 brought up.

5 So with that, if we could start, Mr. Mike Mohajer.

6 MR. MOHAJER: Madam Chair, Members of the Board,
7 my name is Mike Mohajer, and I'm before you on behalf of
8 the Los Angeles County Integrated Waste Management Task
9 Force.

10 There are a few items that I would like to speak
11 about on both Item L as well as Item M.

12 I was a member of the 2296 group. And since the
13 day one, we continuously increase our comments. And it
14 was in reference that there ought to be a separation
15 between the private sector and the public sectors and that
16 was very specifically to the issue of the pledge of
17 revenues from local government.

18 And needless to say, that did not go through. And
19 on October 25th, I asked Mr. Bailey if he knew of any
20 local government that has defaulted in California. And
21 the answer was no with the exception of Orange County.
22 But Orange County defaulted was -- they used the landfill
23 to get out of the default situations.

24 So I want to be in support of the letter that was
25 forwarded to you on November 30th by the CSAC, the League,

1 SWANA, et. al. And everything that they have said, we are
2 in support of that. And I want to make it specifically
3 the table they have shown in their letter of November 30
4 to be -- to replace the table that is shown in the
5 consultant report, because a lot of people, they are going
6 to be looking at that table and misunderstanding what the
7 intent was.

8 And specifically, my recommendation is consistent
9 with what the staff has recommended, that the pledge of
10 revenue has been there and it has worked in the cities of
11 California so far, pretty well.

12 I also, in reference to the financial mean test as
13 well as the corporate guarantees, I am in support of --
14 partially in support of the letter you got from the CAW
15 and the Sierra Club. And I -- based at least on
16 experience that we have in Los Angeles County and having
17 so many landfills in our jurisdiction filing for
18 bankruptcy, all the private sectors, that I think
19 self-insurance by a private landfill operator or a
20 corporate guarantee by the parent company. It's not the
21 type of thing that we want to further pursue in
22 California. And that's something that I would hope that
23 the staff would consider it as a -- as explained in the
24 staff report.

25 So that's basically as far as I think it is

1 concerned.

2 In reference to Item 12 -- the staff
3 recommendation is shown until Attachment 1 -- again, there
4 are two things that we like to get changed, and one of
5 them is in reference to the closure fund as you fill.

6 We believe that, again, making this impression
7 between the publicly-owned landfills, cities and counties,
8 versus privately-owned landfill, our position is that for
9 privately-owned landfill, the funding should be based on
10 what the permitted capacity of the landfill is as
11 established by the solid waste permit, not the
12 condition -- not the land use permit and the other permit.

13 So if landfill X, or let's mention landfill we had
14 this morning, Hay Road Landfill and Nor Cal, if they have
15 a permitted capacity under the solid waste permit for a
16 hundred years and a hundred million ton capacity, then the
17 financial assurance also has to be limited to that, at
18 least.

19 Now, if they want to go and phase in, as the staff
20 recommended, and some of my colleagues in the private
21 sector has recommended, I don't see any problem in going
22 into a leveling. But limit the permit capacity on the
23 solid waste only to that amount that they are willing to
24 provide for financial assurance for.

25 And if they want to go for additional capacity,

1 then they can come back two years, five years, whatever.
2 Whenever they come back, they can increase that financial
3 assurance. So that is one of the recommendation.

4 And again, repeat Item 11. And I would like to
5 see the staff report to eliminate the use of
6 self-insurance as well as corporate guarantees for private
7 sectors.

8 Thank you.

9 CHAIRPERSON MULÉ: Thank you, Mr. Mohajer.

10 Our next speaker, Nick Lapis.

11 MR. LAPIS: Good afternoon, Madam Chair and
12 members of the Board.

13 I'm actually here -- Nick Lapis on behalf of
14 Californians Against Waste. I'm actually here for Scott
15 Smithline who wasn't feeling well, so I'm covering for him
16 right now. Bill Magavern is going to cover our comments a
17 little bit more substantively. But overall, we have some
18 fundamental concerns with the study. We think they are
19 big flaws in the methodology that was used to create this
20 study. And we think that the Board should reject this
21 study and address some of our concerns which we feel
22 haven't been addressed. I'm going to let Bill get into
23 the details.

24 Thank you.

25 CHAIRPERSON MULÉ: Okay. Thank you, Nick.

1 Our next speaker is Martin -- sorry, Martin. I
2 always ruin your last name -- Aiyetiwa.

3 MR. AIYETIWA: Good afternoon and thanks for
4 making the effort to pronounce my name.

5 I think the comments that we would like to make is
6 with respect to the study. We felt that the consultants
7 assumptions and definition of default, that it is too
8 broad. It allows any operator essentially to declare
9 default simply by saying, "We cannot afford to continue
10 post-closure maintenance," and then that would be
11 considered default. We believe it's too liberal and that
12 the definition should be changed.

13 We also believe that the definition, when you look
14 at it, is unfair to local governments because most of the
15 time you look at our form of government it's a
16 representative government. As long as there are people in
17 any county, there would be a government there to be able
18 to cover -- to make laws that will protect the citizens in
19 the sense that counties don't go away. But a company, as
20 we know, sometime, as soon as the landfill is filled up,
21 the company can check them, relocate to somewhere else,
22 out of the state, or take some actions to protect its
23 assets.

24 So that's why we believe that the definition of
25 default as proposed by the consultants needs to be changed

1 and revised.

2 Thank you.

3 CHAIRPERSON MULÉ: Thank you very much.

4 Our next speaker, Larry Sweetser.

5 MR. SWEETSER: Good afternoon, Board Members.

6 Larry Sweetser on behalf of the 22-rural-county-member
7 Environmental Services and Joint Powers Authority. We've
8 also been an active participant in the discussions.

9 Realizing these are very complex issues that have
10 been present to you, I think staff and the consultant have
11 outlined the issues pretty well. I think a lot of the
12 concerns you will hear is just on the conclusions.

13 Realizing that they had a gigantic task, we do
14 share many of the same concerns and others you will hear
15 about talk, and I won't focus on those. The main one of
16 concern is a pledge of revenue, and I will get to that in
17 a second, but also a concern on the pooled funds.

18 We don't have a problem with that analysis going
19 forward. But early on, there was also a condition in that
20 pooled fund analysis to look at including and not
21 including the public sector facilities and maybe just
22 making it only a private sector pooled fund.

23 That analysis seems to have dropped out. We would
24 like to have that back, put in there. That's one of the
25 things to be looking at for this fund. Many of your

1 members are concerned about not only having to fund their
2 own facility but potentially somebody else's.

3 Now, the main concern is on the pledge of revenue.
4 We do appreciate and strongly compliment the Waste Board
5 staff on their efforts to clarify the issues raised in the
6 report. First off, let me say, I don't believe that we're
7 in any jeopardy of losing pledge of revenue from the Board
8 or from staff. Our concern is with other parties. And
9 I've actually had to answer that question from many of my
10 members: Is the Waste Board going to take it away? And I
11 think by raising the kinds of questions that were raised
12 in the report, even though they are valid questions to
13 raise, but leaving them unanswered is of concern.

14 Particularly of concern is others that may take
15 that report including people over in the legislature that
16 may say, there's all these concerns with pledge of
17 revenue, maybe we ought to look at getting rid of that.
18 And I don't want to go down that road with those
19 discussions, especially when Board staff has so strongly
20 supported pledge of revenue.

21 In fact, in the report, staff report, under
22 Item 12, in the discussion of future direction, there's
23 actually a strongly worded statement that they disagree
24 with the consultant's recommendation on pledge of revenue.
25 And what we're hoping is that some form of including that

1 acknowledgment in the staff and the analysis that staff
2 has done of the report get included with the contractor's
3 report.

4 So if anyone comes looking to the Waste Board for
5 the AB 2296 study, not only to get the consultant's
6 report, they also get the staff review of that report,
7 especially including their analysis and all their
8 complements on the pledge of revenue.

9 There were concerns raised by the consultant about
10 the pledge of revenue. Just a piece of paper is what it
11 came across as, and that's plainly not true. I mean,
12 local government is committing resources, maybe future
13 revenue, to pay those obligations. They have no way of
14 getting out of that. They are not going to leave.

15 In fact, many of the pledge of revenue mechanics
16 that are given to Board also include conditions that they
17 will not only pay for the cost estimate and for 30 years,
18 they will pay the relative cost necessary. That statement
19 is stronger than most of the other mechanisms.

20 So not to give it the higher rankings, I think, is
21 a deficiency.

22 And there's also concern about how that liability
23 gets analyzed on the local level. And all the people I've
24 talked to on the accounting side and with solid waste fund
25 have indicated it may not get counted on the yearly books

1 as a liability because they haven't accrued the costs, but
2 if they go seeking future bond funds, they go seeking any
3 other sort of financing, they are required by law to
4 disclose that obligation for post-closure and corrective
5 action. They can't escape that. That gets counted
6 against them as a liability. So that assurance is out
7 there.

8 In fact, also keep in mind that many years ago,
9 the federal government EPA approved California and its
10 financial mechanisms including the pledge of revenue,
11 which is a California-only concept.

12 And the consultant did admit that they haven't had
13 experience with that, and they did defer to Waste Board
14 staff. And I think I would strongly recommend that you
15 also listen to the Waste Board staff, that have years of
16 experience, on this pledge of revenue. You heard Richard
17 say it earlier that they strongly support it. And I think
18 that impression needs to come across in this report.

19 And although you can't adjust the consultant's
20 report, you can include your staff reports. And when
21 somebody comes looking, there's this one document with
22 both of those. And we strongly urge that the table be
23 included and modified. And my answer is that based upon
24 your staff's years of experience with this California-only
25 mechanism, they have rated the pledge of revenue higher.

1 Keep in mind also that the 2296 legislation itself
2 just required the Board to conduct that study. So it
3 doesn't mean you have to just rely on one source. You can
4 include the consultant's report. You could include your
5 own staff's expertise.

6 So for things we ask, if that you attach the staff
7 analysis, part of that in Item 12 staff report. Include
8 the table. That table is very important because that's
9 the first thing that people are going to look at how you
10 rate the mechanisms in that one table. Pledge of revenue
11 is rated low. That's going to be causing all kinds of
12 problems.

13 So that's our recommendation. We do hope you
14 support that and include that in there. And I'm available
15 for any questions.

16 And one other thing is that keep in mind that the
17 pledge of revenue is not just a document the government
18 has signed with their fingers behind their back, saying
19 that they're going to pledge them money. They've actually
20 got their whole credibility out there.

21 Yes?

22 MEMBER PEACE: I guess I am definitely no expert
23 in this. And like you said, they left a lot of questions
24 unanswered.

25 But I was thinking, how does a city or county

1 pay -- or say there was a corrective action like what we
2 had to do in Antioch, and you had to put out \$10 million
3 to fix something right away. How is the money there?

4 I guess I don't understand that. Because when I
5 look around at all the different jurisdictions in the
6 state right now, all of them, their infrastructures are
7 falling apart. Their water systems are falling apart.
8 Their sewer systems are falling apart. And they don't
9 have the money to bring them up to speed. How would they
10 have money then to fix a corrective action? Just explain
11 how that works.

12 MR. SWEETSER: I'm not sure I can fully explain
13 it. I'm not an accountant either. But that's part of the
14 pledge. It defines how they are going to do that. And if
15 not that one source of money, there's going to be other
16 things they have to look at. It is a balancing act.
17 Local governments are pressured for money, especially in
18 my rural areas. I mean, they are balancing even trying to
19 pay their staff sometimes. But they have committed to an
20 obligation. They will have to find a way to do.

21 A lot of it involves, if you have a landfill issue
22 and having to close the landfill, the future tipping fee
23 from that landfill. But there is other sources that they
24 would have to look at. I can't name them all. But I
25 mean, there's -- it doesn't have to be limited only to

1 solid waste enterprises. It can go beyond that. Bond
2 financing.

3 I would find it very unlikely that a local
4 government would have to put out \$10 million right now.
5 That's going to be spent over a period of time which means
6 they have to get some money going. They may have to
7 borrow it or some other mechanism. But that would be
8 spread out over time and they would have to continue to
9 work with Board staff. Otherwise, they are in violation
10 of their permits. So they would have to find some way to
11 do that.

12 MEMBER PEACE: Just looking at just the one thing
13 that came up today with Antioch, obviously they did not
14 have a pledge of revenue. But clear back in, say, 2001, I
15 think even before that, the Water Board had said, "You
16 need to correct this. It's a problem." And they didn't
17 have the money to do it.

18 So that's all I was wondering. How does the
19 pledge of revenue even guarantee that the money is going
20 to be there when it's needed?

21 MR. SWEETSER: It's basically that they will have
22 to find a way to do it. I can't give you specific
23 mechanisms. I know -- that same argument could apply to
24 other mechanisms as well if they go away.

25 MR. CASTLE: Actually -- this is Richard Castle.

1 If I may interject, the pledge of revenue agreement, the
2 local government specifically identifies a source of
3 funds. They identify an annual amount that that source is
4 pledged toward, in this case, your suggestion would be a
5 corrective action, so that would be a reasonably
6 foreseeable corrective action.

7 The plan would have been looked over by the
8 regional board. At this time, that's the way it works.
9 So today's current case would be the regional board would
10 look at the reasonable expectation of a corrective action
11 need. They would work with the operator to determine that
12 amount. I haven't seen one yet. That's got an annual
13 \$10 million estimate, but it could be a \$10 million total,
14 which would still be huge. We don't see them that large.

15 But let's say it's a few hundred thousand dollars
16 per year for the corrective action. The source of revenue
17 would be very clearly identified. It has to be an active
18 ongoing source. It's not just something that they hope to
19 be able to get in the future. They identify, we have this
20 source of revenue now and we will obligate that to the
21 corrective action. So the corrective action gets the
22 first dollar that comes from that source of revenue until
23 the obligation is met.

24 And the additional requirement, or not
25 requirement, but the additional way that the pledge of

1 revenue is worded is that they not only pledge now that
2 amount per year. They don't have to spend it if they
3 don't need it. But if they are using it, they pledge it.
4 They also say that they will increase it to cover those
5 increased costs. And if they can't increase it, they are
6 obligating themselves in that same agreement to come up
7 with additional assurances to the state.

8 So it really is very clearly defined within each
9 agreement where the revenue source is, how much the
10 revenue source is that they're pledging. And it's locked
11 up so they can't go pledge it a second time to somebody
12 else. It's pledged to the state.

13 MR. SWEETSER: And may I also add, I think Richard
14 just proved my point on staff's credibility on dealing
15 with this mechanism.

16 The second part of your questions is --

17 MEMBER PEACE: I realize there's that difference
18 to what ICF -- you know, how they rate it and how our
19 staff rates it. And I guess, still in my mind, I'm
20 grappling with that.

21 MR. SWEETSER: And it's a good question to grapple
22 with and we can look at it further.

23 I think the second part to the question is, what
24 if the money needed is beyond what they had in the pledge.
25 And that's the same situation any operator faces, whether

1 they use pledge of revenue or not, whether they're public
2 or private, how do you get that additional fund. Because
3 Richard said, they've had to identify what that amount of
4 money they felt was reasonable and foreseeable for
5 post-closure. So that hasn't been identified and approved
6 by Board staff.

7 MEMBER PEACE: And one other thing that Larry
8 brought up, I don't think we're actually approving this
9 report today. But I think what he mentioned was a good
10 idea for us to consider is when we do put out the report,
11 if we put out staff's -- you know, staff's
12 recommendations, you know, letters from the rural
13 counties, a letter from the Sierra Club, if all of those
14 can be made part of the report so that people know that
15 there's different feelings on some of the conclusions that
16 came out of the report.

17 MR. SWEETSER: We feel it would be balanced when
18 somebody comes looking for the study, having all that
19 information in there.

20 So thank you for that.

21 CHAIRPERSON MULÉ: Thank you, Larry.

22 Our next speaker is Glenn Acosta.

23 MR. ACOSTA: Well, good afternoon, both Madam
24 Chairs and members of the Board.

25 First I want to start off with commending staff.

1 This has been a very short timeline to get the project
2 done, and they have been able to do this while still
3 receiving input from the stakeholders. And before we get
4 into comments on the ICF report, let me just address Ms.
5 Peace's question on pledge of revenue and give you a
6 concrete example.

7 For our agency, we have gas-to-energy facilities
8 where we sell power, excess power. And we have pledge
9 revenues based on the contract with the utilities --
10 Southern California Edison, so you have, indeed, a source
11 of revenue coming in based on the power you sell.

12 MEMBER PEACE: Well, that there makes total sense
13 to me. But I don't think the rurals produce enough gas.
14 I don't think they have a source of revenue that would be
15 coming off the landfill after it's closed, like you do.

16 MR. ACOSTA: I can't speak to all the landfills,
17 but at least to ones that we operate, we do.

18 Okay. And then secondly, I wanted to provide raw
19 comments on the ICF report and then a couple of comments
20 on the staff report. First, on the ICF report, let me
21 just preface my comments with this. We feel that the
22 current regulatory and enforcement framework is actually
23 good. It's not perfect, but it's good. And as evidenced
24 towards that, BKK is rare. And for public landfills, we
25 don't -- we haven't seen any defaults across the state.

1 If you look at the Waste Board's inventory lists for
2 landfills that are not meeting state minimum standards,
3 that list is actually fairly small. I looked at it the
4 other day, and there are only, like, 10 or 12 landfills,
5 small or in rural areas.

6 The waste -- the water boards are actually
7 addressing corrective action. They require financial
8 assurance. The local air districts, they require gas
9 control for the landfills in order to meet their rules.
10 We do service monitoring in landfills to detect any
11 migration of landfill gas. We -- and as an operator of a
12 landfill, for particularly moderate landfills, we invest
13 in a lot of capital monies to those environmental control
14 systems to make sure that they provide safety to the
15 public and to health.

16 And so I want to just start with that preface.
17 But any broad comment is that we would like to see an
18 informed decision, eventually, on what financial
19 mechanisms are going to be chosen, and we didn't really
20 see that in the ICF report. What we saw were essentially
21 assumptions, and there's a lot of data across the state on
22 landfills.

23 And you know, no two landfills are the same. What
24 can occur here may not occur over there. And it's very
25 site specific. So in order to really come up with an

1 informed decision, you really have to look at all these
2 landfills, individually, and see where the problems are,
3 and where they aren't. We didn't see the report as
4 properly characterizing the problem. And so that's one of
5 the main comments I have on the ICF report.

6 Now, moving on to the staff report and the closure
7 fund-as-you-go, staff is indicating that they would like
8 to tie each phase of the development of a landfill to a
9 permit condition. And that has some repercussions
10 associated with it. Because now, before you are allowed
11 to go to the next phase, there is a discretionary decision
12 or action that has to be made by the LEA or the Waste
13 Board.

14 And so you are no longer guaranteed to have the
15 full capacity landfill at your disposal or for the people
16 you serve, because there is some uncertainty there whether
17 you are going to go to the next phase or not.

18 And the operator's ability to get financing is
19 tied to the overall asset value of the landfill. So if
20 you artificially decrease it -- decrease it by this permit
21 condition, that's actually going to inhibit your ability
22 to get financing. So instead of having greater financial
23 assurance, you are actually going the opposite direction.
24 You probably have less because your ability to get
25 financing is hampered.

1 And secondly, you know, we serve about 78 of the
2 88 cities in L.A. County and unincorporated county. So
3 the mayors of these cities are on our Board, so we have
4 kind of a local government perspective. And if this
5 permitted phasing is in place and there's no guarantee
6 that you can go to the next phase, well, in turn, we can't
7 guarantee to those cities that we serve that that capacity
8 is going to be there for them or that there might be some
9 delay in having that capacity available. So that needs to
10 be really considered when you start talking about this
11 closure fund-as-you-go.

12 And then lastly, there's been a lot of discussion
13 about trust funds and how you build up to final closure
14 and funding for that. And if you have the phasing
15 implemented and you have to provide some funding in case
16 there's some premature of the landfill, although we
17 consider that very rare or very unlikely, that gap between
18 what's in the trust fund and what you need to close, there
19 really should be some flexibility to perhaps have a
20 secondary financial mechanism that you can tap into,
21 either pledge of revenue, pledge of assets, something
22 else, to alleviate the concerns of staff in case there is
23 a premature closure.

24 And then lastly, the other point of the staff
25 report relates to the concept of trying to extend the

1 post-closure period by, now, instead of having 30 years,
2 you add 11 years on top of that. There's potentially --
3 you know, local government does have limited resources.
4 So if you pull money away from local government for this
5 extra funding, you're also taking away money from programs
6 for diversion and other really high priority programs like
7 AB 32 and other such programs.

8 And so just to give you a perspective, I think if
9 I recall correctly, the post-closure fund is in the order
10 of \$180 million. So if you now require a 30 percent
11 increase in funding, that's \$60 million that you have to
12 come up with in a very short time frame. So \$60 million
13 for a five-year period, that's a lot to ask for a local
14 government. So as you toss these numbers around or look
15 at these scenarios, you really have to be mindful of what
16 the impacts are.

17 Thank you.

18 CHAIRPERSON MULÉ: Thank you, Glenn. Our next
19 speaker is Bill Magavern.

20 MR. MAGAVERN: Good afternoon, Board Members. I'm
21 Bill Magavern with Sierra Club California.

22 We've been involved with the Board in addressing
23 the financial assurance issues since the 2003 workshop and
24 really appreciate the fact that the Board has been
25 continually paying attention to this very important issue.

1 We were a cosponsor of AB 2296. And I actually
2 want to point out a mistake in the agenda item in regards
3 to that law. It says that AB 2296 requires the Board to
4 contract for a long-term post-closure maintenance and
5 corrective action statewide study. Actually, what the law
6 says is, the Board should conduct the study. So you
7 decided to contract for it. But the law didn't require
8 that. And so my point is, the law certainly does not
9 require you to rely on this study.

10 And I will certainly argue that you should not
11 rely on this study, because, unfortunately, it does not
12 fulfill the mandate of AB 2296 and has major flaws and
13 does not address a lot of the critical questions.

14 We participated in the consulting group for this
15 study, made a number of very specific comments, never got
16 substantive responses to our questions. So we urge you to
17 reject the findings and conclusions of the report and
18 direct your staff to answer the questions that are left
19 unanswered by ICF.

20 And I will go through what we think are the most
21 important five questions that need to be addressed:

22 What will be the cost of major maintenance?

23 The ICF study does not address major maintenance
24 costs, like if you had a clogged leachate line, that would
25 be very expensive. We need to make sure there's money put

1 aside for that kind of major maintenance costs, not just
2 the minor ongoing maintenance.

3 What are the real risks that a landfill owner will
4 default on its obligations?

5 We think ICF is vastly under stating those risks
6 by looking at old bankruptcy and default records, which
7 were previously compiled for U.S. EPA. We've already had
8 experience in California with one default, BKK. And it's
9 true that that has been rare up till now. But one has
10 already been a serious strain on the general fund, and
11 unfortunately there will be others. So we really need to
12 grapple with a realistic assessment of how likely that is.
13 And we suggest that since we're talking about centuries
14 here, that the Board look at data from orphaned mines to
15 come at a much more realistic assessment of the risks of
16 default.

17 Thirdly, what is a realistic assessment of the
18 magnitude of site failures?

19 Unfortunately, here, ICF is using the operators'
20 own figures. And obviously, they have an interest in
21 under estimating the magnitude of the failures. And then
22 they looked at Minnesota, even though the abandoned
23 landfills in Minnesota are one-hundredth the size of the
24 megafills in California. And even considering that, it's
25 interesting to note that the Minnesota program collects

1 \$4.37 per ton into its fund. And yet, the recommendation
2 from ICF is 5 cents a ton. So \$4.37 in Minnesota. Five
3 cents is the proposal here.

4 Fourth, is the use of captive insurance like
5 mechanisms consistent with the Board policy and sound
6 financial practices?

7 The Board has rightly moved away from captive
8 insurance. Yet here, ICF is putting its blessing on the
9 financial means test, which is essentially a twin of
10 captive insurance and runs the same risk that you are
11 basically betting that a company is too big to fail. And
12 if you look at what happened with Enron, you know, going
13 from being the darling of Wall Street to, within a year,
14 going into bankruptcy, we see that you really can't rely
15 on that sort of a test, as Mr. Mohajer has already pointed
16 out.

17 And finally, how large would a pooled fund need to
18 be to provide adequate financial assurance?

19 We think we really need to look at the
20 probabilistic risks that are at issue here, and that
21 clearly the fund discussed in this report is not adequate.
22 So again, we suggest that you -- instead of relying on
23 this report, direct your staff to come back with the
24 answers to these questions so that you will have a sound
25 basis for moving forward with the rulemaking that is

1 called for by the statute.

2 Thank you.

3 CHAIRPERSON MULÉ: Thank you, Bill.

4 Our next speaker is Chuck White.

5 MR. WHITE: Thank you, Madam Chair, members of the
6 Committee. Chuck White representing Waste Management.

7 From the looks of things and from the
8 participation I've had over the past several months, it's
9 clear that the ICF report's been roundly criticized by
10 virtually all stakeholders including our solid waste
11 industry group. And it almost leads me to believe that
12 maybe they must have gotten something right because it
13 seems like everybody is unhappy with some portion of their
14 report.

15 And we have concerns in large part because there
16 really wasn't a very good deliberative process that
17 allowed a give and take between the Board staff and the
18 contractors. It was because of the deadline. It wasn't
19 ICF's fault. It was because the deadline was set up in
20 legislation to get the report out. But we were really
21 concerned that we were really able to provide information.
22 We had to do it in a hurry-up basis. I think five working
23 days, to respond to the various documents. We had to
24 scramble like mad to get the comments together.

25 We did the best we could. We got as much

1 together, and we provided it over the course of it. And
2 we really wanted to have an objective evaluation and make
3 sure that this report and study was based upon real world,
4 existing, information. And we still have concerns of
5 whether or not that was completely accomplished. We
6 provided as much as we could in that process.

7 One of the recommendations that we hope does go
8 forward in this is outlined in the staff report, is take a
9 look at the subtitle D regulations that exist across the
10 country, not just simply the -- how long post-closure care
11 is required and subtitle D regulations under federal, and
12 most states follow, allow a state to extend or shorten the
13 post-closure care period is necessary to protect human
14 health and the environment. We don't think that's a huge
15 burden. We don't think that's a step backward. In fact,
16 we also almost wonder how the state got away without
17 putting that kind of provision into its existing
18 regulations that allows that post-closure care period to
19 be extended, if necessary, to protect human health and the
20 environment.

21 And also, we would hope that all the financial
22 assurance mechanisms that are allowed under subtitle D
23 have been approved by EPA, including the pledge of
24 revenue, you know, are allowed to be considered and go
25 forward.

1 It upsets me a little bit when I hear my friends
2 in the public sector criticize the mechanisms we use but
3 not the mechanisms that they use. So I hope there is an
4 objective process going forward. Look at all the
5 mechanisms under subtitle D that are approved by U.S. EPA
6 and allow those to go forward.

7 And in conclusion with that, I understand the
8 Board has concerns. But what happens if there's a failure
9 to meet your obligation through your financial assurance?
10 And that's in large part why this pooled fund concept,
11 which we think has a lot of merit -- we've said it has a
12 lot of merit from the very beginning. The devil's going
13 to be in the details. And we want to work cooperatively
14 with this Board and this staff to try and figure out --
15 and any consultants you may choose, to try to figure out a
16 pooled fund that would provide an exception, a fallback,
17 for those situations that may occur in the future for
18 which the state needs to step in and take action when the
19 owner or operators are able to.

20 We believe, and I believe, the ICF report
21 substantiates that to their analysis that while that can
22 happen and may in fact happen, it's going to be relatively
23 limited in number. There's not going to be this massive
24 failure of all landfills or problems of all landfill
25 operators to meet their obligations. It's probably going

1 to be a relatively small number, if any at all. But we
2 understand the state's need to make sure that you got some
3 kind of fallback mechanism to take care of that. We want
4 to work with you to do that.

5 With respect to the proxy factors that the
6 consultants came up with, we've had a lot of concerns that
7 it's too simple and it's limited in its ability to
8 actually look at specific -- site-specific situations. We
9 think it may be a tool to evaluate a broad range of
10 programs, but we're really concerned about applying this
11 kind of proxy factor to individual sites, such as setting
12 fees and might be charged to individual sites.

13 You are really opening up a very contentious and
14 controversial area if you were to rely on this on a case
15 by -- on a site-by-site basis rather than using it at the
16 35,000-foot level which I think the consultants would
17 concur, as set up now, it's probably the most useful
18 purpose and not apply it to individual facilities.

19 We're a little bit concerned about the staff
20 report's continuing wanting to paint the worst case
21 picture, and that -- I can go through the whole report and
22 give you a number of examples of that. But probably one
23 of the most troublesome things to me, in our solid waste
24 industry group, is Figure 2 that appears on Page 2 of
25 Attachment 1 of this agenda item. And that's that chart

1 that shows this red area of post-closure costs and this
2 massive blue area. And that's a large part of an artifact
3 from the way the post-closure costs are calculated. You
4 basically take your post-closure care costs for your most
5 expensive year and multiply it by 30 years, and it's just
6 blocked. It ends. And really, it doesn't really reflect
7 what we believe and the data in the literature believes
8 that your post-closure care costs typically start out high
9 and they decrease over time to -- they don't disappear
10 necessarily, but they do decrease. And this seems to
11 imply that there's this huge continuing increase -- the
12 cost you have for the initial 30 years per year continues
13 off in infinity, and we think that is simply not
14 consistent with reality, that your post-closure care
15 costs, in fact, decline over time and may, in fact, reach
16 de minimis value for most landfills as they stabilize over
17 their post-closure care life.

18 And in the case, if you need a longer post-closure
19 care period, subtitle D regulations allow for that
20 post-closure care period to be extended. Then, if you
21 couple that with a pool fund concept to allow the Board to
22 have a source of revenue to step in and take corrective
23 action, whether you are owner or operator, which, again,
24 we believe is relatively rare, this would be if we covered
25 that problem without having to do a worst case scenario at

1 all the landfills.

2 Finally, my comment is on the things that you are
3 proposing to do initially, in the near term, this closure
4 fund-as-you-go we think has a lot of merit. We've always
5 been concerned about tying up a lot of capital that's not
6 going to be needed for a long period of time in the
7 future, for 20 or 30 years.

8 So why not allow us to always be assured that
9 we're going to guarantee to you that at any point in time
10 that landfill closes, we're going to have adequate closure
11 costs and post-closure care costs to be able to cover it,
12 at that closure, at any one point in time. But we don't
13 need to have it today for something that's going to happen
14 20, 30 years out in the future.

15 We also support this idea of trying to make sure
16 that existing regulations are being complied with, with
17 respect to corrective action. There's this very telling
18 table on page 4, Figure 3, that shows there's a total of
19 282 landfills with post-closure maintenance financial
20 assurance mechanisms. But only 74 landfills have had
21 corrective action financial assurance. We kind of scratch
22 our heads. And as far as we know, all of Waste
23 Management's landfills have a corrective action plan for a
24 reasonably foreseeable release, which is designed not
25 because there has been a release but because if there is a

1 release to make sure that you have adequate funds to be
2 able to correct that.

3 And we wonder why that 74 isn't 282. So one
4 suggestion we have is, before we start going off and doing
5 all kinds of new programs and new regulations and no
6 legislation, maybe we ought to look a little closer to
7 home and figure out why these two numbers are so far
8 apart. And I hope you don't find a Waste Management
9 landfill in there. But as far as we know, we're in full
10 compliance.

11 So that really -- I mean, we just urge you to go
12 forward, accept the report. If you are going to attach
13 the comments that have been made recently, we urge you to
14 attach all the comments that have been made over the
15 course of the process because our industry group really
16 didn't comment towards the end. We feel it was pretty
17 much a done deal on the report.

18 But we did comment extensively during the three or
19 four months. So we would hope that all comments, if you
20 just are going to bundle them together, bundle all
21 comments as you finalize this report if that's how you
22 decide to go.

23 We look forward to working with you in the next
24 new months. And hopefully, we'll come up with a system
25 that will work for everybody.

1 Thank you.

2 CHAIRPERSON MULÉ: Thank you. Our next and final
3 speaker on these two items is Lory Rising.

4 MR. RISING: Hello. Good afternoon, Board
5 Members. My name is Lory Rising with the L.A. County
6 Sanitation Districts.

7 Glenn Acosta took care of the bulk of our remarks.
8 I just wanted to add a couple of brief things.

9 First, to kind of clarify on maybe the disconnect
10 on the pledge of revenue, I think what we have is a
11 difference between a very workable program and practice,
12 as Richard has described, versus the state of the
13 regulations, as described by ICF. And then moving forward
14 to kind of reconcile the two would be a good step to
15 consider.

16 Second of all, I've been one of the people that
17 have had my -- had trouble getting my hands around the
18 whole ICF study and where it's headed and all.

19 I do have one concern as we move forward on to
20 this in terms of some of the parameters that are used,
21 especially the urban versus rural parameter, that that
22 difference in potential risks that is tied to that might
23 be considered by some people that aren't as familiar with
24 this whole process, as somehow meaning that urban
25 landfills are less in compliance with title 27 than rural

1 landfills are, whereas there's really no distinction in
2 that, as far as I'm aware of. So perhaps at some point in
3 the staff report, it could be noted that that was not
4 meant to describe compliance status per se or the full
5 applicability of title 27. It's a proxy for other kinds
6 of things.

7 And finally, as we kind of move forward into the
8 additional stages of policy decisions, something that is
9 problematic for the sanitation districts is to have
10 multiple levels of financial assurance whereas we have a
11 problem and that there may not be a need for a financial
12 assurance mechanism to cover situations that already have
13 a financial assurance requirement and that that be
14 something to be considered by the Board as well.

15 Thank you.

16 CHAIRPERSON MULE: Thank you.

17 Okay. That concludes the public input portion of
18 this.

19 So I guess now what I would like to do is take
20 comments from Board members. Questions, comments,
21 observations? Who would like to start? Board Member
22 Peace?

23 MEMBER PEACE: Sure. I will start.

24 Like I said, I tried to muddle through that report
25 too. And obviously, I am no expert in this area. I've

1 tried to do the best I can to put it all together.

2 But we all got a letter from the Sierra Club and
3 CAW and Peter Anderson. And I do have to say, I agree
4 with what they are saying. The ICF report doesn't seem to
5 take into account the big major maintenance corrective
6 action-type expenses, like cap replacement and leachate
7 line failure. The study seems to understate the
8 possibility of a landfill owner not being able to fund for
9 corrective action. It understates the probability and the
10 dollar amount of the failures by using the landfill --
11 landfill's own post-closure cost estimates and by using
12 Minnesota as a model. I think we all know that leachate
13 caps and liners won't last forever. Just for example,
14 with a geomembrane composite liner, it only has a 20-year
15 guarantee from the manufacturer.

16 I would like for this committee to direct that the
17 staff and ICF, either one of them or working together, try
18 to answer the questions that were brought up in the letter
19 that we got from the Sierra Club. To me, I think those
20 questions need to be answered in order for us here at the
21 Board to make the best informed decisions that we can on
22 how to protect the state. And I think we all know that
23 there will be problems in the future of closed landfills.
24 And that's kind of a given to the extent we really don't
25 know, because it hasn't gotten to that point yet. But I

1 think we all agree there will be problems in the future.

2 And also with this report, it talks about a pooled
3 fund capped at \$45 million. I mean, anyone who thinks a
4 state pooled fund capped at \$45 million is adequate is, I
5 think, living in la la land.

6 So I would like to make sure that these answers,
7 that Sierra Club gets the answers to the questions. And
8 whether they could be answered by January or February at
9 the latest -- that's not to hold up the process at all. I
10 think we still need in the meantime to move forward with
11 what staff is recommending.

12 I guess -- I am no expert in this field. I am
13 really grappling with all these things. My first instinct
14 is to think, the only real insurance is third-party
15 insurance. I mean, I trust the market, that it will do
16 the best job of pricing risk.

17 But with that being said, I know all these other
18 things are going on, and I hope that I can better
19 understand them as we moved forward.

20 But also, I think whoever is making the profit is
21 also -- should be the one that is paying for the risk.

22 As we move forward, I know the first rulemaking
23 we're supposed to make sure that financial assurance
24 mechanisms for closure were adequate. I hope that the
25 first rulemaking regs did do this. I know, I still have a

1 couple of questions on a couple of things, but I'm hoping
2 that the first rulemaking did accomplish that.

3 Now, the second rulemaking, you need to make sure
4 that financial demonstrations for 30 years post-closure --
5 need to make sure, are they adequate, because, you know,
6 it's not okay to walk away. This needs to be a long-term
7 commitment.

8 As we go through, I think staff had this as one of
9 their recommendations. How can those financial assurances
10 be extended past the 30 years? And I think staff already
11 has some recommendations of things they want to look at
12 and, you know, can they be reviewed every five years and
13 extended. I think the ICF report does mention that most
14 of the financial assurance mechanisms that they looked at,
15 it was possible for all of those things to be extended.

16 We need to make sure that financial assurance
17 mechanisms, like I said, go for longer than the 30 years.
18 We need to require that corrective action financial
19 assurance mechanisms are there for all landfills, for the
20 none -- for the non-water related items as well as the
21 water quality-related issues during the post-closure
22 period and beyond.

23 Again, I think we all -- all kind of jumped out --
24 all of us, that only 74 of the 282 landfills have
25 water-related corrective action on them. I think I heard

1 that that was something we are working with the Water
2 Board on. And then -- that their answer is, that kind of
3 fell through the cracks. I don't know what exactly the
4 answer is. But that's something that's important to me
5 that we need to make sure there's those corrective action
6 mechanisms in place for everything the Water Board has
7 control over, all the water related corrective action
8 things.

9 So we are working with the Water Board. I mean,
10 maybe we -- maybe it would do good for us to send a letter
11 to the Water Board saying that we are concerned about this
12 and we hope to work with them. We hope to resolve this
13 problem and bring all the landfills up-to-date in an
14 expeditious manner, especially since half the landfills
15 are going to be closed here by 2009 and really need to
16 deal with this.

17 Like staff says, we need to deal with the old
18 landfills. Is the application of any new requirements,
19 can they be applied to the old landfills? How do we deal
20 with the landfills that are going to be closed shortly?
21 All these things, staff have recommended that they need to
22 think about.

23 And the financial assurance mechanisms, if they
24 can't insure the long-term obligations, then we need to
25 create some sort of a government fund, a pooled fund with

1 a tipping fee increase. And we need to do everything we
2 can to make sure that the state is protected from the
3 long-term post-closure maintenance and corrective action
4 costs in the event a landowner does fail to meet his
5 obligations. I think that's what we're all here for.

6 I know you said in developing a statewide pool
7 fund, there's a lot of things to consider there. Are we
8 going to have equal -- is everybody going to contribute
9 equally? Or is everybody -- are they going to contribute
10 based on the environmental controls and the location of
11 the landfill? Those are things we'll be looking at
12 currently, also.

13 I did want to ask the questions on the items that
14 we deferred, from Phase 1 to Phase 2. I think it was
15 brought up also by L.A. Sanitation District where they
16 brought the fact that this section was crossed off in
17 Phase 1, where it says, "Cost estimates shall include the
18 costs for activities yet to be completed even if the
19 activity is tentatively planned to occur or be completed
20 prior to the closure or completion of post-closure
21 maintenance."

22 Now, is that -- we pushed that off into the second
23 rulemaking? Is that something we'll still be looking at
24 in the second rulemaking?

25 CHAIRPERSON MULÉ: Actually, that's part of

1 Item 10. Item 10, we'll be discussing that at the Board
2 for Item 10. We're going to take up that item.

3 So it probably would be appropriate to bring up
4 that question there, under that item.

5 MEMBER PEACE: Maybe in Item 10 I will also bring
6 up the question, too, where we go back to financial means
7 test, where they are raising the \$10 million figure to
8 \$15 million. Again, in my mind, I'm just grappling with
9 that. It's just a small insignificant increase, and this
10 kind of makes it, like, why do we even do it, especially
11 when there's only one landfill that uses that to begin
12 with, and that's Waste Management, Chuck. And Waste
13 Management's net worth is \$20 billion. So why do we have
14 like a -- raising it from 10 to 15 dollars of financial
15 mean to me, it's like why? It should be either -- a lot
16 more than that. And really to me, that's totally
17 unacceptable.

18 As we move to the second phase, we either need to
19 figure out how we can restrict this further use or bar its
20 use altogether. Again, as I look through all of staff's
21 recommendations, I think staff covers all these things
22 that I just mentioned that were something -- all the
23 things I was concerned about.

24 And I said I personally feel comfortable with
25 going forward with staff's recommendations.

1 CHAIRPERSON MULÉ: Thank you, Board Member Peace.

2 Board Member Danzinger?

3 MEMBER DANZINGER: Well, I agree. And thank you
4 for those comments. I think those were excellent points
5 and I agree that some of the questions and concerns have
6 been raised by CAW and Sierra Club and all of the
7 stakeholders will need to be addressed and fleshed out as
8 part of this process as it all unfolds. I mean, this is
9 the beginning of the process. It's a complex issue. I
10 think the staff report is a good first step.

11 I want to thank the contractors for doing a pretty
12 good job. I mean, there were some inherent limitations
13 with what you had to work with. And so where there are
14 holes or things that I might have issue with, that's not a
15 matter of competence. It's a matter of -- I think it's
16 just inherent with the issue itself.

17 I will say that of all the Board issues in memory,
18 I am not sure I can recall one with as much contention.
19 It seems around every corner there was an opportunity for
20 a wedge to be driven between groups and stakeholders. I
21 think that the process has been managed pretty well. And
22 I think there's been a lot of tremendous feedback and very
23 thoughtful feedback.

24 Now, some of my comments I'm going to make here,
25 and they are going to meander a little bit. But I think

1 as you were referencing here earlier, Ted and staff, as we
2 move forward, you are going to have to start developing
3 some stuff, so I think you are entitled to as much
4 visibility of where our thinking is at, as possible.
5 That's part of where I'm coming here. I don't know if
6 these comments are totally necessary. But I want to give
7 you the benefit of that as we try to frame all of this in
8 our minds.

9 There were a number of points made in the
10 stakeholder input that I found very helpful in starting to
11 frame this in my mind. I'm going to share a couple of
12 them here.

13 One stakeholder group wrote as a very good
14 remainder of the problem statement, "The current rules do
15 not provide assurance for minor maintenance costs after 30
16 years. They also do not recognize major maintenance costs
17 at any time nor in practice the costs to remediate serious
18 site failures."

19 Agreed. And this is a sound basis for the law and
20 what we're trying to do here. And I think that major
21 maintenance is something that needs to be looked at.

22 That said, that same group also wrote, rather
23 provocatively, "Even if these corporations did survive
24 that long, they would inevitably try to rid themselves of
25 responsibility for spent assets that have not produced

1 revenue in decades."

2 And I agree that that is a sound basis for
3 concern. I don't know to what extent that's really going
4 to be a problem, but I would not characterize that as
5 baseless paranoia but rather healthy suspicion.

6 Another group offered the following: "Rigorous
7 standards have been designed to minimize risk at sites
8 operated and closed under its terms."

9 And that's an excellent point, and I think a
10 fundamental point relative to a lot of the issues that we
11 are still grappling with. I certainly do not share the
12 opinion that rigorous standards offer little or no risk
13 reduction. Some of the comments, I found some agreement
14 and disagreement with in the same comments.

15 One, for instance, read as follows: "How can a
16 solution be legitimately derived where no documented
17 problem exists, or where the problem is undefined.
18 Without this information, ICF appears to be attempting to
19 design a fix for something that is not broken."

20 Now, on the one hand, I disagree with this
21 characterization that in a way counters the veracity of
22 the law itself. I mean, 2296 is also about preventive
23 government, which can be a good thing too.

24 But the statement also raises the legitimate
25 question of legislative intent. After all, seeking a

1 higher standard to reduce risk and impact is not
2 necessarily also a statement that the current system is
3 absolutely broken and has failed, but rather, that it is
4 insufficient, perhaps in some areas, and should be better.

5 Finally, a sizable issue of contention, a big
6 challenge for our Board and our obligation to do our due
7 diligence is the amount of empirical data behind the
8 findings of the study and, well, because it's the basis
9 for the construct.

10 Because, you know, we're likely going to be a
11 model for the nation on this. So we have to tread
12 carefully and we have to be very measured and thoughtful.
13 The law identifies two basic objectives which we've gone
14 over and over again, but I'm going to read it one more
15 time.

16 "Define the conditions" -- this is one of them --
17 "that potentially affect solid waste landfills, including
18 technologies and engineering controls, designed to
19 mitigate potential risks in order to identify potential
20 long-term threats to public health and safety and the
21 environment."

22 And this is a central issue. I do question
23 whether the study goes as far as it could or should in
24 building a foundation upon which to accurately assess
25 risk.

1 I'm trying to get a sense in my mind of how much
2 more might be out there that we should be drawing from and
3 how much needs to be built into this before we have a
4 degree of confidence that we're working with the best
5 foundation possible.

6 Now, first, I believe, personally, that it's
7 acceptable, and probably unavoidable, that the study is
8 more qualitative than quantitative to some degree. I
9 mean, we're at the tip of the spear on this. And so I
10 think there's naturally going to be at least some
11 limitations of what is out there to draw from. And
12 something more expensive, more expansive, and longer term
13 is contemplated, to be sure.

14 I supported 2296 because I support two fundamental
15 premises -- that we need to look beyond 30 years, and we
16 need to look beyond routine PCM.

17 But although the risk evaluation makes an effort
18 to categorize, to differentiate, it still has the
19 effect -- or we need to guard against the effect of
20 limiting those distinctions. And it reflects the
21 presumption or more easily accommodates the presumption of
22 catastrophic consequences across the Board that would be
23 more closely associated with old and unlined facilities
24 and very poor compliance histories.

25 And I think by doing so, again, we have to guard

1 against this down the road, because by doing so, I think
2 we would end up punishing folks for years of higher
3 investment and adherence to much higher standards in order
4 to comply with the law. And I think this is an issue for
5 me that I'm trying to resolve in my mind, because I think
6 that it is somewhat irrational, okay, to require
7 additional controls and higher standards for the purpose
8 of minimizing risk and impact, but then not take those
9 factors fully into account in assessing risk.

10 So the amount of empirical data and the default
11 rates, for instance, taken into consideration are very
12 important here.

13 Even if this is all, to some degree, based more
14 upon prevention than pervasiveness, I might be fine with
15 that if the presumptions are not so broadly applied and
16 summarily catastrophic. BKK may be the shape of things to
17 come. It may also be the vivid anecdote that supports
18 fragile numbers I don't know. But I'm not convinced that
19 risk assessed with so little distinction as it is in the
20 study.

21 I don't know what the right distinction is
22 exactly. But I think there is probably more room as we
23 move along in this process for more quantitative data and
24 analysis, given the magnitude of what we're trying to
25 accomplish here.

1 And I'm keenly aware of the legislative deadline
2 that we're approaching and how that factors in. So I
3 know, as we go along, I'm going to continue to be very
4 anxious to hear where my colleagues are on this, and
5 again, work all these things out together and get the
6 right product in the end.

7 Now, I have a couple questions that I want to ask.
8 The first one, and again, let me preface this by saying,
9 there are no preconceived bias or conclusions about
10 landfills in this question. I'm just befuddled by this,
11 what I read in various places. I have seen a review of
12 the material, an attribution to our staff, that our staff
13 has concluded that landfills will fail and that corrective
14 action is inevitable in all cases.

15 And I read this five or six times in one letter
16 alone, such as the following two statements. First, "As
17 recognized by the staffs of both EPA and CIWMB, the very
18 design basis for modern state-of-the-art landfills is
19 inherently flawed. Ask second, "ICF has ignored all of
20 the key findings of the staff including that rather
21 decisive fact holding most or all of today's putative
22 state-of-the-art landfills will eventually fail."

23 Now, reading the very first sentence of the agenda
24 item in the staff report, it reads, "Solid waste landfills
25 may pose a potential environmental threat indefinitely due

1 to the necessity for ongoing maintenance of closed
2 facilities and for reasonably foreseeable corrective
3 actions to respond to releases from the facility."

4 Now, that, to me, sounds like a very reasonable
5 issue statement and problem statement, reflects a healthy
6 concern over what are the long-term prospects and
7 performance characteristics of landfills. It's certainly
8 more than enough behind the justification for 2296.

9 But it contrasts fundamentally with this other
10 characterization, which, you know, about the absolute
11 inevitability of failure of all landfills and the
12 catastrophic consequences. So while that might be a
13 technical observation, I think here, in this 2296
14 policymaking forum, it sort of has the effect of a policy
15 conclusion.

16 And a policy conclusion, I might add, is not
17 reflected in the public deliberations up here or in 2296
18 itself.

19 So again, no conclusions about the issue. I don't
20 know what the long-term performance characteristics and
21 prospects for landfills are. But again, this struck me.
22 I don't know what is behind this.

23 And can you all clarify that for me, please?

24 PROGRAM DIRECTOR RAUH: Well, I think that the
25 staff stands behind the staff report at this point, the

1 way that is characterized. We see the issues as
2 potentially being significant for both closure and
3 post-closure maintenance. But we also recognize that
4 there are design standards that have been put in place and
5 that there is a surveillance program in place, involving
6 ourselves and our partners, and that all of those -- all
7 that system, working together, should provide a level of
8 construction -- constructive operation of those
9 facilities.

10 But there still exists the potential for
11 significant implications for the state and for people in
12 close proximity to some of these facilities if we have the
13 kinds of events that have been described both in the
14 contractor report and in the staff report. We do -- we
15 live in a very seismological state. We've just seen a
16 massive fire storm in Southern California that has removed
17 the gas control system from a landfill down there. And
18 it's still not back up and it will have to be replaced.
19 And was that adequately planned for? I can't tell you
20 right now. But obviously when we live in an environment
21 with these kinds of situations -- this kind of potential,
22 we have -- it's only proven that we plan for it.

23 MEMBER DANZINGER: Okay. I agree with everything
24 that you just said, Ted. And if anybody -- you know,
25 those who may have the option about the absolute

1 inevitability, I can appreciate that and respect that
2 conclusion. I just didn't know what -- why that
3 particular sentiment was attributed to staff, and maybe
4 there was some prior collaborations.

5 The next question I have is, one of the
6 stakeholders comments is that we have not used the RCRA
7 regulatory definition of "corrective action." Are we
8 redefining that term or somehow going beyond that RCRA
9 definition, anyway? I mean, I know, some of the
10 stakeholders are concerned about this because it might
11 result in the transformation of current operational
12 expenses into corrective action that might require
13 financial assurance.

14 I'm also concerned because I just want to make
15 sure that, you know, our program -- ultimately what we
16 develop is not impeachable because we've got all our ducks
17 lined up, and we're not going out of bounds here. I know
18 there are some areas where we go beyond RCRA, you know,
19 such as 30 years and other areas. I don't know how much
20 more stringent it is.

21 DIVISION CHIEF ORR: I think there's a couple of
22 things to keep in mind. First of all, one of the things
23 that we do have is sort of a partitioning of
24 responsibilities as a result of previous legislation, AB
25 1220. And so some of that may pertain to the fact that

1 we've got the water quality-related things addressed by
2 the regional water board, State Water Board. And we're
3 sort of -- there's an area of joint coverage between the
4 two. So I think that might be part of it.

5 The other thing is that as we move forward with a
6 number of these proposals, we've already been in
7 communication with representatives from U.S. EPA. And I
8 think we want to make sure that some of the creative and
9 innovative things that we've raised today are things that
10 we make sure that we vet through them to make sure that
11 they are, in fact, consistent with the definitions.

12 Now, sometimes we might want to go above and
13 beyond some of those. But clearly, we want to make sure
14 that we're at least consistent with the requirements of
15 subtitle D and we have engaged with U.S. EPA Region 9 as
16 we've gone through this process this fall.

17 MEMBER DANZINGER: Okay. Thanks, Bill.

18 Last question. One letter refers to the RCRA
19 corrective action project. Have we been drawing from
20 that, or has that been useful to us in any way? I don't
21 know what that is.

22 DIVISION CHIEF ORR: If it's what I think it is,
23 it was a project -- and this actually might be a good one
24 for Paul Bailey to elaborate on. But it's my
25 understanding that that was a federal pilot project that

1 was commenced at one point, and I'm not even sure how far
2 along it got in terms of getting off the ground. But it
3 essentially would be akin to the State taking over
4 liability for some or all of the landfills in the state.
5 And there was a pilot project to do that kind of thing at
6 the federal level.

7 And Paul, I don't know if you want to elaborate on
8 that at all, but that's my understanding.

9 MR. BAILEY: Bill, I think you are thinking of the
10 post-closure liability trust fund. I think our cap --
11 probably one of the stakeholders is in the best position.
12 I thought that was more of a joint partners study group.

13 MEMBER DANZINGER: You know, it was presented in
14 such a way that it could be helpful to the process of what
15 we're doing. So I don't know if the stakeholder is here
16 who posited that. I mean, if they have anything to say
17 further about it.

18 MR. WHITE: Chuck White with Waste Management. I
19 may have forwarded it along, but I think our folks in
20 Washington, D.C. are the ones who are involved with our
21 cap process. And it's a long-term discussion with EPA on
22 a whole variety of issues related to continuing care
23 facilities. One of the issues they have been talking
24 about is distinguishing between closure and post-closure
25 corrective action and custodial care. And maybe landfills

1 would move into something called custodial care for which
2 there is never an absence of risk altogether, but the risk
3 has reached such a low level that there really doesn't
4 need to be a continuing obligation for financial assurance
5 and corrective action because the landfill stabilized, the
6 leachate is fine, the cap is functioning, and this sort of
7 thing.

8 But that basically -- it's never been translated
9 into a regulatory action, that sort of thing.

10 MEMBER DANZINGER: If they can pinpoint that point
11 in time, have them let us know. Thanks.

12 CHAIRPERSON MULÉ: I just have a few comments
13 here. I don't want to reiterate what my fellow Board
14 members just said, because I think that brought up some
15 very good points.

16 I just want to emphasize that this is an extremely
17 important and a complex issue. And I've been here three
18 and a half years now. And I've attended pretty much every
19 workshop starting with the ones that staff had conducted
20 back in '04. So I've been privy to the conversations that
21 have occurred. Since then, it's been really interesting
22 to see the evolution of this whole process and where it's
23 gone and where we're going with it.

24 I was commenting to Board Member Peace, I really
25 am pleased that we're finally moving forward with this

1 issue because it is so important. And I think that while
2 there has been a lot of criticism, I think that the ICF
3 report was a very, very, good report from the perspective
4 that you had limited time, limited resources, and limited
5 information from which to develop the report.

6 You did the best you could with what you had. And
7 I could clearly see that. And so I want to thank you for
8 the work that you did and also to our staff, because I
9 know how hard all of you have worked on this short time
10 frame. It was -- it was -- I mean, we were under the gun
11 to get this done. You got it done in time, so I want to
12 start out of by thanking you for all of your hard work and
13 getting it done. And of course to all the stakeholders.
14 I know that all of you weren't happy with the public
15 participation process that we set up. But again, we felt
16 that in the interest of time, it was the best that we
17 could do.

18 And I do agree with Board Member Peace and Board
19 Member Danzinger. I think we should answer the questions
20 to all the stakeholder letters, not just one letter in
21 particular. These -- this is all part of the ongoing
22 discussion. I truly believe that we're just getting
23 started on this whole process. And I think that we have a
24 good start. I mean, we've got the regs that we're going
25 to be hearing at the full Board. We've got the ICF

1 report, which came up with some conclusions that -- or I
2 came up with some conclusions that, you know what, we
3 really need to look at more quantitative data in terms of
4 the risk assessment. Again, the report, in my mind,
5 helped me clarify what the informational needs are out
6 there, for us.

7 And so we do need quantitative data. I also feel
8 that, you know, from a risk assessment standpoint, we need
9 to look at each facility on an individual basis. To what
10 degree, I don't know what that's going to look like. But
11 I just feel that we cannot apply an across-the-board
12 assessment on every landfill, because every landfill is
13 site specific, and they have engineering designs and
14 environmental controls specific to that landfill.

15 The other issue is -- you know, the big question
16 is, will all landfills fail at some point? Well, you know
17 what? I don't have a crystal ball and nobody in this
18 room, I think, does either. We don't know. We don't
19 know. But we, as a regulatory agency, have a
20 responsibility to look at what those risks might be and
21 then figure out the best policy on how to deal with it.

22 So that's really the big question that we're
23 facing here today. And so again, I think that the report,
24 the staff recommendations, we've got a good start here,
25 working -- one of the recommendation is to work with the

1 Water Board to make sure that we get all 282 landfills to
2 have their corrective action financial assurance mechanism
3 in place. I mean, that's a great start, you know, as a
4 first step. Let's follow -- let's get that done and then
5 figure out what else we need to do.

6 But, you know, there's -- there are a lot of
7 questions that need -- in my opinion, need further study,
8 further discussion, and further quantitative data in order
9 for us, as policy makers, to make the right and the
10 informed policy decisions.

11 So with that, I fully support staff's
12 recommendations on how to proceed. I think the way you
13 have outlined it, it is very good, and I think it will
14 give us and the stakeholders additional time for much
15 further discussion on this so we can truly have the
16 thorough detailed discussion that we need to have.

17 So with that, I'm ready to recommend to staff
18 that -- as the committee, we support your recommendation
19 on how to proceed forward and just continue to dialogue.

20 So thank you all very much.

21 PROGRAM DIRECTOR RAUH: Thank you very much. We
22 appreciate it.

23 CHAIRPERSON MULÉ: Thank you. We really do
24 appreciate all your work on this. With that, we have our
25 final item of the day.

1 THE REPORTER: I need a break, first.

2 CHAIRPERSON MULÉ: I'm sorry. It's been two and a
3 half hours. Let's take a five-minute break.

4 (Thereupon a break was taken in
5 proceedings.)

6 PROGRAM DIRECTOR RAUH: Madam Chair, Committee
7 Members, Item 13 is an update, discussion item. And the
8 purpose of the item is to update the Board and the
9 Committee on the implementation activities of the illegal
10 dumping program, provide a panel discussion on illegal
11 dumping put on by members of our Illegal Dumping Task
12 Force, and to seek further Board direction regarding the
13 staff's approach to dealing with illegal dumping.

14 As you know, illegal dumping poses a significant
15 risk and also a financial burden on local government, not
16 to mention the fact that it degrades the quality of life
17 in our local communities.

18 And with that, I would like to turn it over to Ken
19 Stuart to give some brief introductory comments on the
20 staff's approach, and then to introduce the panel.

21 CHAIRPERSON MULÉ: Thank you, Ted.

22 Hi, Ken. Thank you for being here.

23 MR. STUART: As Ted said, I am Ken Stuart. I am
24 the no official title except I'm the project coordinator
25 for the Illegal Dumping Task Force.

1 (Thereupon an overhead presentation was
2 presented as follows.)

3 MR. STUART: The Illegal Dumping Task Force, as
4 you know, was formed about two years ago. And today we're
5 going to basically be discussing what's happened recently
6 or is ongoing with it. Part of this is in response to
7 strategic directives which were involved with two
8 strategic directives, the two strategic directives which
9 were passed and had that's fine. We will basically
10 discuss those in greater extent at the Board next week as
11 part of the strategic directive reports.

12 Some of the key activities that we've been
13 involved with, shortly after Ted Rauh got on board and
14 Bill got on board, we decided we needed to do something
15 formal, internally, within the Board to really just start
16 discussing and coordinating the illegal dumping efforts
17 within our staff. So we formed what ended up to be Team
18 Illegal Dumping, because it's a TID, which you always have
19 to have good acronyms. And that was done in July of 2007.

20 Without giving names, the list up here is
21 basically the membership of it. And it covers both of our
22 programs, Cleanup, all the way to Legislative Office,
23 Statewide Technical, and so forth. So we meet about every
24 two weeks to every month in discussing specific items.

25 So go ahead with the next one.

1 --o0o--

2 MR. STUART: What we've been working with so far
3 is, we started off in analyzing all 24 of the task force
4 recommendations. I think this was a good learning
5 experience for all of us, because we started realizing
6 that here is a task force that was primarily composed of
7 county, city, federal, nonprofits, environmental groups,
8 and so forth, that really represented where things were
9 happening. And all of a sudden the people involved
10 starting saying, you know, there's some real ways that we
11 could fit in with this as a Board.

12 So just going through the recommendations was
13 valuable. One of the things that was initiated is our
14 Grants and Loans staff are looking more and more on common
15 things that we can do to shortcut grants whether it's for
16 waste tires, you know, household hazardous, LEA grants,
17 and whatever. It's an open discussion now. And we're not
18 saying that we always have to change things, but we're
19 trying to look at ways to simplify it, to make it easier
20 to locals. The waste tire programs, one of the
21 recommendations was going into basically a redemption
22 value for waste tires. And we kind of said, wow, you
23 know, that's a lot.

24 We've kind of taken the attitude more of let's not
25 pursue that right now. Let's see what we can do.

1 One of the first things that's happening is that
2 more amnesty days are being offered. The funding for
3 those, getting those tires, brought them in. The locals
4 are finding it works. So if we can get the tires off,
5 hopefully, as we remove these, there's going to be less
6 people that are going to throw them there because there's
7 another tire already.

8 The LEA Cleanup Grant Program, where it used to be
9 as an LEA and you had that grant -- there's several grant
10 programs for waste tire cleanup. LEA in particular used
11 to have a 500-tire top on it; you needed at least 500
12 tires. That's being dropped down to 300 tires. So
13 hopefully this means that we can get more waste tire piles
14 cleaned up.

15 Another recommendation that's very specific was
16 the white goods. The second most common -- actually, one
17 of the most common disposed of items along our highways
18 and roads are white goods -- refrigerators, washing
19 machines. As you deal with Public Works, you find that
20 that's probably the most, what do we want to say,
21 occupational safety issues as far as how do you handle
22 one, single, staff driving a truck, picking up a washing
23 machine or something? And it goes on and on. So it means
24 it's some of the most expensive.

25 What's come out of this is through the TID, the

1 extended producer responsibility program has looked at the
2 statistics and is saying, you know, we should potentially
3 include white goods and extended producer, EPR, program.
4 So hopefully we're going to be able to solve some of those
5 problems, again, without getting into legislation.

6 The next two things we're working on -- I will go
7 into them a little more -- is the best management
8 practices document and enhancing the Web site. We are as
9 a TID going to be working with the development of that and
10 then support new development of the outreach and public
11 awareness components.

12 Let's go to the next one.

13 --o0o--

14 MR. STUART: Best management practices. That is
15 one that we talk about with potential allocation
16 difference. And what we're doing is basically we formed a
17 committee. We're taking the experience, and that's the
18 city of Los Angeles, Fresno, and County of Imperial. All
19 three of those members are here today. Gary Harris, you
20 will hear from pretty quick from Los Angeles; George
21 Valdes from the City of Fresno; and Jeff Lamore from the
22 County of Imperial. We've met today. We'll be meeting
23 some more tomorrow on where we go with this and how can we
24 get this down relatively quick.

25 Trying to utilize existing policies and procedures

1 for a basis. It's going to be Web-based, concentrating on
2 prevention, enforcement, and abatement, getting us to what
3 can local jurisdictions use? What's good for them? Every
4 time you talk with people, you learn. I won't go into
5 examples, but there are so many good things that counties
6 and cities can do that are the ones that are already
7 doing.

8 We want the interactive ability. Rather than
9 having us put everything on, we want to get the Web site
10 to the point that the counties or cities can go to the
11 webmaster and say, "Here's what's happening in our city
12 right now. Can we get this on your Web site?"

13 And then the legal office has already been working
14 on this. The next step we have is getting, again, the
15 city, counties, codes on the Web site so people can look
16 at those also.

17 And we have addressed those specific
18 recommendations. Those are actually in the back of the
19 attachment. We're hoping to have that done by the spring.

20 Next one.

21 --o0o--

22 MR. STUART: The next part we're trying to work on
23 is outreach and public awareness. One of the very strong
24 recommendations of the out of the task force is that the
25 Waste Board, the state needs a presence in illegal

1 dumping. We need to tell people, it's not acceptable.

2 And it needs to come from a high level. It needs to come
3 from regional levels. But we need to come up with
4 something on this.

5 We're working on a committee right now. You know
6 some of them. Cookie Robles Wong from the City of Oakland
7 will be joining us. She's the PIO for the Public Works
8 Department; Aurora Rush out of Kern County Solid Waste,
9 their PIO will be joining us; and then Narcisa Untal from
10 the Solano County Environmental Resources Agency will be
11 joining us. So we have three staff working at the local
12 level that are doing public awareness and outreach right
13 now will be joining with the staff from Sustainability and
14 the Public Information Office. What we will be doing is
15 basically identifying what should go into a contract
16 allocation proposal, what's going to meet the needs for
17 all of us.

18 And I'm hoping to get -- set the audience.
19 Looking at the general public is one. The practitioners
20 is one, and then finally the illegal dumpers themselves.
21 How do we get to them?

22 Hopefully once we get going in the next few weeks,
23 we'll have about a six-week completion schedule on that.

24 Go ahead.

25 --o0o--

1 MR. STUART: New River Pilot Project is one that
2 kind of came up to us in the last six months. That -- you
3 know, part of what we do in outreach is telling people
4 that, hey, you can get surveillance assistance. There's
5 things that we could help you, the highway patrol can do.
6 We have equipment and so forth.

7 So we did do a project with Imperial County,
8 looking at the New River, identified initially some 47
9 illegal dump sites. It's up to, I think Jeff told me,
10 60-some-odd right now that we're working on.

11 All the sites have been characterized. Where we
12 thought initially that many of the properties were going
13 to be public-owned, 37 of them are privately-owned. So
14 it's a big chunk that we're finding are private property
15 owners. All of them have been sent notices by the
16 Imperial County staff that they need to abate it based on
17 county codes.

18 We're looking at potential master agreements using
19 Farm and Ranch grants on some of them. Basically, we'll
20 be working with Jeff and his staff and our staff on
21 looking at what can we do.

22 It does point to an emergency policy of the issue
23 of cost waiver recovery on private property, something you
24 may or may not want to address in the future.

25 Next one.

1 --o0o--

2 MR. STUART: We also identified through the
3 advisory -- through the task force and through staff some
4 areas which we're going to look at needing some additional
5 statutory authority.

6 Go ahead and go on these.

7 Go ahead on all of them, if you want to and I'll
8 just talk as they come.

9 --o0o--

10 MR. STUART: One of them is identifying the Waste
11 Board as the lead agency. As you know, it's not in the
12 statutes. That's one that we've said, once it's there,
13 it's going to be stronger. Go back one, if you could.

14 --o0o--

15 MR. STUART: Additional grants for funding and
16 development of local programs. Whether that's for
17 abatement, targeted enforcement, public awareness,
18 development, whatever, we do need to look at some
19 additional grants for those programs.

20 One of the ones that we've come about is, we all
21 realize that LEAs are not always illegal dumping. And
22 enforcement agencies from the counties and cities, you
23 have code enforcement, whatever. But one thing that
24 doesn't occur is if an LEA is the illegal dumping officer
25 or they are involved in it right now, they

1 don't -- they are not able to include it in their
2 enforcement program plan that comes up to the Waste Board.

3 So one of the suggestions we've had is to give the
4 staff the ability to include that and their budget in
5 their EPP if they want to. It wouldn't be a mandate, but
6 if they are doing it, they should be able to get credit.

7 Local permit program for refuse hauler provider
8 has been identified statewide as one of the keys. If
9 somebody says that's another regulatory, it would look at
10 a local permit. But there's been agreement when I met
11 with League of Cities, with the Regional Council, Rural
12 Counties, CSAC, they all say, "We may not like it, but
13 it's one of the keys that we need."

14 So that's another one we've identified.

15 CHAIRPERSON MULÉ: Excuse me, Ken. Is that
16 something that, you know, we could make that optional,
17 like the city or the county can decide on their own
18 whether or not they need it?

19 You and I have had this discussion before
20 regarding franchises. And basically, there are certain
21 jurisdictions in the state that have exclusive franchise
22 with haulers, so there's really no need.

23 There's -- no one is supposed to be hauling
24 whatever they are hauling within that jurisdiction's
25 limit.

1 MR. STUART: Yeah. It's -- obviously, we've
2 identified what's the direction to go. It's the ones that
3 work outside of the franchises. And I know Riverside
4 supposedly prohibits them. However, when we talk with
5 them at extent, they say, "You know, you're right. There
6 are people that are doing it." Also one that would come
7 under this could potentially be gardeners. And they are
8 not covered in Riverside County. They do have a habit,
9 particularly when they are charging for the waste, for the
10 lawns and so forth, if the landfill is closed through
11 their composting facility, you put it alongside the road
12 because it will decompose.

13 The problem with that is, when somebody puts a
14 mattress on top of that because we've started it. So,
15 yes, it is. And it all depends on how this gets picked up
16 if it gets picked up. But there's very definitely a need
17 to get ahold of basically these mom-and-pop-type powers.

18 CHAIRPERSON MULÉ: Okay. Thank you.

19 MR. STUART: Defining evidence of ownership is
20 another one that's statewide. It is so difficult to
21 enforce illegal dumping because somebody will say, "Well,
22 I gave that to my neighbor," or, you know, I --
23 "Basically, that's not mine."

24 So what we want to try and figure out, is, is
25 there a process where you could have two pieces of

1 evidence -- and Bill will be talking about this in a few
2 minutes -- to say, "This is yours, and you are going to
3 have to do something about it."

4 And then finally, one that we've kicked around
5 with the tire dealers to retain waste tires. That's been
6 one that seems like that should be pretty simple. When
7 you buy new tires, right now, you may pay the fees to the
8 tire hauler, but you can take the tires with you because,
9 you know, I may want to put those on for snow tires
10 eventually or something. And when you come to move, all
11 of a sudden, they become disposed.

12 So that's another area we've kicked around, might
13 make a good addition to statutory authority.

14 --o0o--

15 MR. STUART: What we want to come into now is the
16 final part, is basically kind of comments from all aspects
17 of our team. And I will introduce them all at once so
18 they can go ahead and go in order.

19 Birgitta Corsello, she's our director of Solano
20 County, Department of Resources Management, also the
21 director of Public Works. She sits on the CSAC -- chair
22 of the CSAC Solid Waste Committee. Has been on our task
23 force. And today, she will be talking about county issues
24 and needs.

25 Gary Harris, next, is our chief investigator for

1 the City of Los Angeles, Streets and Highways and
2 currently the president of the Code Enforcement Officers
3 Association of California. So we'll be talking a little
4 bit about code enforcement issues in city and counties.

5 Bill Mannel talking for Regional Council of Rural
6 Counties and Public Works. And in general, he's the solid
7 waste manager for Butte County. He'll be talking about
8 local ordinances and some of the things they have done is
9 starting to inspire counties statewide on how to handle
10 things.

11 Stanton Lang have passed you his comments.
12 Stanton is sick today. He is a vendor owner out of San
13 Joaquin County, also on the farm bureau and is on the San
14 Joaquin County Illegal Dumping Task Force. Stanton's
15 concerns basically are rights of public-owned property and
16 so forth.

17 And then Paul Dickinson, I think some of you know,
18 is the board chair of Keep California Beautiful. He's
19 been on our task force. And he's going to talk a little
20 bit about the role of nonprofits.

21 Without anything else, Birgitta, it's yours.

22 MS. CORSELLO: Good afternoon. And thank you,
23 Waste Board members from the committee on Permitting and
24 Compliance. I'm Birgitta with the County of Solano.
25 However, today, I'm here before you as the chairperson of

1 the Solano County Engineers Association -- excuse me,
2 County Engineers Association of California. I'm the chair
3 of their Solid Waste Committee.

4 And the County Engineers represent the 58 counties
5 in the state. We are the public works directors,
6 typically. And as that function, I would like to thank
7 you for supporting the efforts of Ken Stuart and your
8 staff and looking at the challenge that continues to grow
9 for local jurisdictions with regards to illegal dumping
10 and the opportunities that your staff is exploring that
11 might assist us as we go forward.

12 You will hear from some of the other task force
13 members today that we've been working together on various
14 aspects of illegal dumping and some of the opportunities
15 or challenges that we would like for you to consider.

16 Sometime back, you received the results of the
17 joint survey that was conducted between CSAC and the
18 League of Cities. And you may recall that 33 of the 58
19 counties responded to the county side of that survey and
20 estimated that they were responding about \$17 million
21 annually, based on last year's figures for the cleanup and
22 removal and disposal of things illegally dumped in the
23 unincorporated areas of the county.

24 In order to pay for that cleanup, local
25 governments must typically -- most typically, Public Works

1 agencies bear the brunt of those cleanup costs as well as
2 the work. We typically use our local forces, and we pay
3 for those costs -- both the pickup, the separation, and
4 ultimately the disposal -- using road fund dollars,
5 general fund dollars, and other sources such as grants.
6 And occasionally, you will hear, some counties are able to
7 use tipping fees or have moved into enforcement actions
8 and cost recovery programs.

9 The burden of cleanup is not just limited to
10 public works for counties. There's a burden that's placed
11 on city public works agency as well. Rural residents --
12 agriculture bears a large brunt, farmers and ranchers in
13 the rural areas. But so do state and federal agencies who
14 own land in California.

15 Most often, the disposal occurs in rural, remote,
16 and isolated areas or areas where there's less traffic or
17 people are present in the evenings, under cover of
18 darkness. Most of it occurs on lots, creeks, streams, or
19 drainage convenances, and consumes a fair amount of our
20 staff time to remove the hazards, not only the nuisance
21 itself but also the hazard in the event of fire or flood
22 or the road hazard that's been presented.

23 There's an additional burden that public works
24 agencies carry, and Ken alluded to it. It comes with
25 regards to the exposure our staff has experienced when

1 they go out to remove those materials. Be it cuts,
2 punctures, muscle strains, or back injuries, or worse, we
3 incur the down time of our staff and the recovery of our
4 staff in addition to the cost of the pickup and the
5 removal.

6 Occasionally, it's hazardous materials, and we are
7 assisted by your existing state programs and other
8 agencies, but many of the things that we're dealing with,
9 we pick up either with a crew assisted by sheriff's work
10 release or by our own crew.

11 The most common things we pick up that cause
12 injury are large appliances, furniture, water heaters,
13 drums, barrels, and bags of waste.

14 Water logged items are a particular problem for
15 all agencies including special district flood control
16 agencies, and present a challenge because you have a
17 choice. You can either store it at your yard till it
18 dries out so you have a lower tipping fee when you go to
19 dispose of it, or you can haul the water-logged item to
20 the landfill and pay a higher fee and not have to have the
21 storage space for that material.

22 The cost includes the redirection of our labor
23 forces from the routine maintenance assignments and duties
24 to immediately responding to the hazard that's been
25 presented or the public nuisance that's been presented.

1 The County Engineers Association and the Solid
2 Waste Committee have been reviewing the results and the
3 recommendations of Ken Stuart and your staff's work and
4 the recommendations that have been developed. We support
5 the priorities listed in your attachment to your report
6 today.

7 Public Works Departments welcome an expended range
8 of tools being made available to local jurisdictions that
9 would provide training and education of our staff, expand
10 local enforcement and cost recovery options, increase
11 information and access to existing Waste Board programs
12 and information on best practices, as well as manufacturer
13 responsibility and take-back programs, and most
14 importantly, expanded funding and cost recovery
15 opportunities.

16 We encourage the Waste Board to not ban waste
17 streams from landfills without supporting our expanding
18 disposal options for those waste streams prior to or
19 concurrent with those changes.

20 CSAC, which is the group that we advised, and the
21 County Engineers Association encourage the Waste Board to
22 create and establish tools and programs that are flexible
23 and that are optional for local governments, since we are
24 a diverse group of governments, where some counties are
25 rural and others are very urban and not all tools will fit

1 for all agencies. We are not an all -- one-size-fits-all
2 will not necessarily be the most beneficial for us.

3 CSAC will be working -- the CEAC organization, the
4 Engineers Association will be working with CSAC and your
5 consultants and staff to assist in the 2008 update of the
6 illegal dumping survey. And as part of that, we are
7 contemplating, when that goes forward, asking our members
8 in particular to take the list of 24 items that are before
9 you and ask them to prioritize them from a Public Works,
10 County Engineers Association, perspective so you will know
11 more particular items that are of interest, that we would
12 find most beneficial.

13 In so doing, we hope that we can continue to
14 partner with your staff and the task -- through Ken and
15 the task force, and look forward to coming up with
16 solutions in the near term that will address our problems
17 and hopefully reduce the \$17 million cost estimate that
18 the 33 counties provided, and perhaps more accurately
19 capture how much are we spending today.

20 And with that, I'm available to answer any
21 questions. And I would like to thank you for your time.

22 CHAIRPERSON MULÉ: Thank you. We really
23 appreciate you being here.

24 And before I go any further, I just want to thank
25 all of you for being here. I know some of you have

1 traveled far and wide to get here. So thank you for all
2 of your participation with the Illegal Dumping Task Force.

3 So with that, any questions for Birgitta?

4 Okay. Our next speaker.

5 MR. STUART: Let's go, Gary.

6 MR. HARRIS: Good afternoon. I'm Gary Harris from
7 the California Association of Code Enforcement Officers.
8 And on behalf of our association, we would like to thank
9 your Board for taking the initiative to move forward with
10 these programs that will help us in the fight against
11 illegal dumping.

12 Illegal dumping is the most frequent environmental
13 crime committed in California today. As evidence of the
14 extent of this problem, we can look at the example of the
15 city of Los Angeles where in Los Angeles alone, in the
16 2005/2006 fiscal year, over 250,000 cubic yards of debris
17 were removed by the City's Bureau of Street Services. In
18 fact, Los Angeles spends in excess of \$10 million yearly
19 to mitigate illegal dumping. Obviously, this is revenue
20 that could be used to cover important infrastructure needs
21 and public safety concerns in the city.

22 The epidemic of illegal dumping is not only a
23 public health issue, but it's also a safety issue. It
24 lowers property values and lowers the quality of life in
25 California.

1 As mentioned previously, the dumping ranges from
2 common household goods to many other items that are more
3 difficult and more expensive for cities and counties to
4 remove, such as construction debris, abandoned vehicles,
5 appliances, yard waste, furniture. But then there are
6 more instances that our code enforcement officers are
7 seeing statewide of more serious types of illegal dumping
8 that include the dumping of medical waste and hazardous
9 waste, things that present a very serious public safety
10 concern for our community.

11 The problem overwhelms the resources of many
12 cities and counties, including law enforcement agencies,
13 code enforcement, and public health agencies. The lack of
14 adequate funding for education and enforcement and the
15 need for different penalties are important factors in the
16 continued growth of illegal dumping in California.

17 Illegal dumping is not a victimless crime and
18 should not be treated as such by the judicial system. Too
19 often, violators face minimal consequences for illegal
20 dumping violations. The U.S. EPA illegal dumping
21 prevention guide listed several key factors for the
22 enforcement of illegal dumping laws, many of them very
23 similar to those identified by the task force.

24 The five key factors noted in that publication
25 were significant resources, trained enforcement officials,

1 clear lines of authority, timely prosecution, and support
2 of the judicial system.

3 Now, an example of an illegal dumping program that
4 makes use of many of these factors that are recommended by
5 the U.S. EPA is the program the City of New York has
6 successfully started within the Department of Sanitation.
7 In the City of New York, there is a dedicated properly
8 trained enforcement agency dedicated to illegal dumping
9 and litter violations. In the City of New York, both the
10 owner and the driver of the vehicle used in the commission
11 of an illegal dumping crime are liable for a dumping
12 violation. The fines can range from 1500 to 20,000
13 thousand dollars for one occurrence of illegal dumping.
14 And another important issue about those fines, the City of
15 New York, those are administrative fines, so the money
16 recovered from these fines goes directly back to the city
17 for use in illegal dumping activities to support their
18 enforcement and their mitigation activities.

19 Dedicated enforcement and stiff penalties have led
20 to a decrease in illegal dumping in the City of New York.
21 We think strongly that these measures would work here in
22 California also. Among the things that the task force is
23 recommending are improved training activities.

24 One of the things that the California Association
25 of Code Enforcement Officers feels strongly about is

1 standardized training for illegal dumping enforcement
2 throughout the state of California, to make the issue more
3 important to our code enforcement and law enforcement
4 agencies in the state as one of the key issues that we
5 need to deal with as an environmental harm to our cities
6 and counties.

7 We also think that we need dedicated funding for
8 local programs for both dumping and litter enforcement and
9 that at this time it would be very helpful if we could get
10 a commitment from our judicial system to look at illegal
11 dumping as the crime it truly is.

12 We thank you for giving us the opportunity to
13 speak on this issue. I would be happy to answer any
14 questions that you may have at this time.

15 CHAIRPERSON MULÉ: Thank you, Gary. That was a
16 great overview.

17 Any questions for Gary?

18 Let's move on to our next speaker.

19 MR. STUART: Bill? You got your PowerPoint up?

20 MR. MANNEL: Good afternoon, Madam Chair and Board
21 Members. My name is Bill Mannel. I am the solid waste
22 manager for Butte County.

23 (Thereupon an overhead presentation was
24 presented as follows.)

25 MR. MANNEL: And in Butte County, we're fortunate

1 to have a pretty effective illegal dumping program. I've
2 been with the County for three and a half years now. And
3 one of the things that I did when I came on board was take
4 a look at the illegal dumping issue. It was started in
5 development right before I got there, and we finalized it
6 during my -- when I was hired. And it's become pretty
7 much a model that a lot of counties are starting to take a
8 look at now. We actually have a road show that we take it
9 to the board of supervisor presentations, and they like to
10 use our ordinance and exhibits.

11 Could you advance the slide, please.

12 --o0o--

13 MR. MAGAVERN: What we did is, like any other
14 county, we had costs to pick up roadside litter and
15 illegal dump sites in the public right-of-way. That cost
16 is obviously very low, and Gary probably smirks at how low
17 that cost is.

18 But the real cost is that our roads are not
19 maintained. So we're using Public Works road crews that
20 should be maintaining roads to pick up litter, which was
21 kind of crazy.

22 Next slide, please.

23 --o0o--

24 MR. MAGAVERN: This is the same location as the
25 first slide that you saw 72 hours later.

1 And the next slide, please.

2 --o0o--

3 MR. MAGAVERN: What we did with our ordinance have
4 essentially created cradle-to-grave ownership, created an
5 administrative order which was fines of a hundred dollars
6 for the first offense; 200 and 500 for successive events.
7 It was a misdemeanor. It established, as I said, the
8 administrative order and hearing. And it will be
9 interesting to note, in two and a half,
10 two-and-three-quarter years, we have not had one
11 administrative order appealed because of the evidence that
12 we had on the individuals.

13 Next slide, please.

14 --o0o--

15 MR. MAGAVERN: The second part of our ordinance,
16 which is the hammer, established a seizure and forfeiture
17 of vehicles used in the illegal dumping act if it were
18 witnessed. And the DA who, in our county, does not like
19 to lose cases participated very strongly in the
20 development of the language. So he was pretty much
21 assured, if we had the evidence that he would not lose a
22 case.

23 We have not seized a vehicle yet. We pretty much
24 reserve that for contractors that profit from illegal
25 dumping.

1 Next slide, please.

2 --o0o--

3 MR. MAGAVERN: The program in 2005, we started the
4 program. An illegal dumping hot line was established. An
5 aggressive multimedia campaign was developed. We
6 developed the GIS database tools for tracking our cases so
7 we could determine where the hot spots were. And we
8 developed a case tracking database, in-house.

9 Next slide, please.

10 --o0o--

11 MR. MANNEL: What is needed for enforcement? We
12 use the two items -- the threshold of evidence is two
13 pieces of evidence to the homeowner. It can be mail,
14 receipts, photos, you name it. If we have to, we take
15 those two pieces of evidence to the responsible party's
16 address, we show them the evidence, and say they have 72
17 hours to abate the -- to abate the illegal dump site. And
18 as I said in two-and-three-quarter years, only -- we
19 haven't had any appeal to that, but we've only had three
20 cases not abated within 72 hours.

21 They know the evidence is that strong.

22 --o0o--

23 MR. MAGAVERN: Active enforcement -- that's our
24 code enforcement officer. I guess maybe that's why he's
25 so successful. He learned to camouflage him pretty well.

1 Next, please.

2 --o0o--

3 MR. MAGAVERN: Taking a proactive approach in
4 enforcement, you have to have a lot of buy-in from a lot
5 of people, and we worked very aggressively on this. You
6 have to be able to determine your hot spots, active
7 patrols, post your signs.

8 Most importantly in my opinion, you need to work
9 with the community, the neighborhood watch groups. You
10 have to use the media. You have to convince people which
11 you know inherently that they don't want their county
12 dumped on and known for dump sites and go out into the
13 woods and see these illegal dump sites. So that's
14 inherent. And you just have to engage them in, it's your
15 responsibility to report to us so we can help the
16 community abate some of these situations.

17 And fast abatement of dump sites. That's our
18 72-hour threshold. And like it was said earlier, if a
19 pile sits there, all it does is get bigger.

20 Next slide, please.

21 --o0o--

22 MR. MANNEL: The first eight months, 117 reported
23 cases with evidence. Obviously, there's cases that do not
24 have evidence, and Public Works is involved in cleaning
25 those up.

1 Interesting thing here, out of 117 cases, we found
2 that 83 were single family rental units where they did not
3 have trash service. And I want to speak to that a little
4 bit later. Ninety responsible parties were contacted.
5 This is where we could find good sustainable evidence to
6 go and give them an administrative order. Those 87 sites
7 were abated. Since then, we have -- every single
8 responsible party illegal dump site has been abated by
9 those folks. So the three that I mentioned earlier had a
10 cost to Public Works, and we billed those responsible
11 parties.

12 Next slide, please.

13 --o0o--

14 MR. MAGAVERN: The GIS, as I mentioned earlier,
15 determining our hot spots, we do plot out all our illegal
16 dump sites. My code enforcement officer is very skilled,
17 and I will speak to that a little bit later as well.

18 He just hit me up with a new tool, a new gadget,
19 that he wants to get -- a camera that has GIS capability.
20 So not only can he take the picture, it will plot itself
21 to a GPS. And when you click on that dot, the case number
22 will come up with the evidence, the photo evidence, as
23 well, which is pretty interesting.

24 --o0o--

25 MR. MAGAVERN: 2006, you will see 46 reported

1 cases with evidence. Obviously, down, and that was our
2 goal. We wanted to be very aggressive right out of the
3 gate and we saw it in the second year, so successfully
4 such that we found that a lot of the illegal dump sites
5 had illegally dumped tires so we thought, it's a natural.
6 Let's go for the waste tire enforcement grant which we now
7 have. And that's enabled us to take some of the time that
8 we would have spent on the illegal dump sites, that we
9 don't have to as much anymore because the case has dropped
10 off. Now we are actively involved in the tire enforcement
11 which hasn't -- up to this point, hadn't been very strong.

12 Next slide, please.

13 --o0o--

14 MR. MAGAVERN: In 2006, the Tire Enforcement
15 Grant, we had 95 generators inspect 17 notice of
16 violations; 16 sites brought into compliance after the NOV
17 was issued. We found 31 illegal dump sites with tires.
18 And Public Works abated 1,561 tires from the public areas.

19 That's another thing that we found in the course
20 of our program development is, after we saw the numbers of
21 those tires, we asked the Waste Board -- and thank you
22 very much, we have very effective tire amnesty events now.
23 And we typically would average about 130 to 150 tons per
24 year. This last event that we had just a month ago, it
25 was 130 tons by itself.

1 So that's another way that our code enforcement
2 officer is involved with trying to get some of these
3 illegal dump sites abated by hopefully not having them be
4 illegal dump sites by three disposal programs.

5 Next, please.

6 --o0o--

7 MR. MANNEL: 2007, 28 cases. Again, still going
8 down. 14 of the 28 cases were single-family residential
9 units, about 50 percent instead of 70 percent that was
10 earlier. These sites as well have been abated.

11 Next slide, please.

12 --o0o--

13 MR. MAGAVERN: The typical responses: "I paid a
14 guy who came to my house. I paid him 20 bucks to take the
15 stuff away, and I don't remember who he was. I can't
16 remember what he's driving. But my neighbor knows who he
17 was." Or if -- our code enforcement agent is very
18 resourceful. If it looks like if he believes the person,
19 "Do you have a receipt?"

20 "Yes, here's my receipt." Great. Now we go for
21 the bigger fish. So we don't necessarily go after that
22 person. And that's worked successfully.

23 How the program has evolved. As I said earlier,
24 we found that single family rental units were a high
25 percentage of our illegal dumping. So we created an

1 ordinance that said, now the landlords of rental units are
2 responsible for providing the trash service. You cannot
3 defer that responsibility under the property owner. You
4 as the -- the tenant -- the property owner is responsible
5 for the trash. And if we find that a tenant disposes of
6 trash illegally, and through that evidence, we go back and
7 find out that the landlord did not provide trash service,
8 the landlord is equally responsible for abating that
9 illegal dump site.

10 --o0o--

11 MR. MANNEL: The resources that he uses, every one
12 of these agencies are absolutely critical. And I am very
13 blessed. And Gary touched on it earlier. We need good
14 training for code enforcement personnel and solid waste.

15 I have a gentleman that came over from the
16 planning side that did all the other code enforcement, and
17 he's now with me. He has 15 years of experience and he's
18 cultivated all of these resources. He can find somebody
19 that if -- if he had two pieces of evidence and that
20 person has moved three or four times and is out of state,
21 he finds it. I don't know how he does it, but his sources
22 are incredible. And that's the type of training and the
23 interagency support that's needed for an effective
24 program. And that's what I mentioned earlier is that we
25 cultivated these contacts and got everybody on board.

1 This is not only our problem, it's everybody's problem.

2 Next slide, please.

3 --o0o--

4 MR. MANNEL: And I think that's pretty much the
5 end of it.

6 Thank you, very much.

7 CHAIRPERSON MULE: Thanks, Bill. Great
8 presentation.

9 I really hope you can share what you're doing, and
10 I think that's the purpose of what -- one of your projects
11 is to share good information like yours. You are doing a
12 great job. So thank you.

13 MR. STUART: Thank you.

14 Our next speaker could not be here today. Stanton
15 Lange, he's the -- I call him the gentleman farmer from
16 Lodi. And he's very active in the Farm Bureau. His
17 message -- you have a copy of it. Basically, he does talk
18 about the involvement in ag, but his voice throughout the
19 task force was very interesting on the -- kind of looking
20 at the rights of property owner. And he basically is very
21 clear that, you know, a lot of times the Farm and Ranch
22 grants will help them, like to be able to do more
23 invoking, what you are talking about. But if they don't
24 apply and the individual property owners have to do things
25 and they are not responsible for it, it's kind of tough on

1 them.

2 So what he's saying basically, is, we should be
3 helping out the victims, the property owners that do it to
4 themselves, and we should be going after -- and we should
5 be going after the illegal dumpers. So that's kind of a
6 quick paraphrase.

7 As I said, I wish Stanton could be here, but he
8 can't.

9 Our last speaker today is Paul Dickinson.

10 Paul?

11 MS. DICKINSON: Thank you very much. I very much
12 appreciate the opportunity to speak to the Board today and
13 offer this statement. I am representing Keep California
14 Beautiful. I have served on the board of directors of KCB
15 since 1992, representing the Lawrence Livermore National
16 Laboratory, and have served as president of the board for
17 the past six years. KCB is a nonprofit environmental
18 organization with a primary focus on litter abatement,
19 source reduction, recycling, reuse, and beautification.
20 Our primary mode of operation is through volunteerism,
21 public outreach, and the promotion of public-private
22 partnerships with the goal of protecting California's
23 environment through effective behavioral change and its
24 citizens.

25 KCB is our state's affiliate of Keep America

1 Beautiful.

2 We believe that there is an obvious natural link
3 between KCB's focus on litter abatement and illegal
4 dumping. As many of the communities that conduct cleanup
5 events are routinely dealing with small illegal dump sites
6 and/or materials that are not generally considered litter.

7 Illegal dumping, as it's been pointed out
8 repeatedly, is a major and growing problem in the state of
9 California. Yet, I think it's a problem for which few
10 California citizens have a true understanding.

11 As the task force has pointed out, illegal dumping
12 poses risks to the general public and the environment,
13 degrades the quality of life in the affected communities,
14 and is costly to clean up. Illegal dumping is an
15 intentional act that is typically done for economic gain.

16 I believe that the report of task force and the
17 testimony of the folks represented here today have defined
18 the problem quite well, although the true cost of illegal
19 dumping in our state is still not understood. Now,
20 several folks have, of course, referred to the costs.

21 And if you will allow me, I wanted to reiterate a
22 couple of points. As the task force has reported, a
23 recent statewide survey, with 54 percent of counties and
24 only 10 percent of cities responding, revealed an
25 estimated annual abatement cost of \$34 million. This does

1 not include grant funding currently being received by
2 local governments to support cleanup activities.

3 Representatives from the federal government, which
4 owns, of course, 50 percent of the land in our state,
5 estimate their illegal dumping abatement costs to at least
6 match those of local government.

7 CalTrans FY 07 and 08 costs for litter and illegal
8 dumping abatement and are estimated at \$55 million, which
9 does not include enforcement costs. Nor does that take
10 into account the volunteer efforts under the
11 Adopt-a-Highway Program, which has been estimated at an
12 annual value of about 15 million. And by the way, it
13 seems to me, we have no idea what the private sector is
14 spending on cleaning up illegal dumping activities that
15 affect them.

16 Given all these considerations, we believe the
17 impact of illegal dumping on California and its citizens
18 is probably close to \$200 million a year. From a
19 financial standpoint alone, we must develop a
20 comprehensive and aggressive public-private approach to
21 dealing with this problem.

22 In developing and implementing a statewide
23 strategy for addressing the illegal dumping problem, KCB
24 believes that the Board should take full advantage of all
25 the resources that are available to you including

1 enlisting the participation of private -- of the private
2 and nonprofit sectors. In general, nonprofit
3 organizations play an important role as a mechanism for
4 citizen participation in important social issues such as
5 education, health care, and, of course, environmental
6 protection.

7 Thousands of Californians contribute to the --
8 contribute to and actively participate in nonprofit
9 environmental organization with a variety of missions.
10 KCB, for example, annually organized California's
11 participation in the Great American Cleanup through which
12 thousands of volunteers conduct litter cleanup, recycling,
13 and beautification events throughout the state. During
14 our peak year, over a four-month period, KCB sponsored
15 over 900 events statewide that involved the participation
16 of over 50,000 volunteers.

17 Most nonprofits also actively partner with other
18 non-profit organizations and the private sector to
19 leverage resources. As KCB's participation reflects with
20 the Coastal Commission's annual beach cleanup, regular
21 collaborations with the California Conservation Corps, and
22 KCB's recent success in developing the Reusable Grocery
23 Bag Initiative with Save Mart and the Waste Board, and an
24 expanded cell phone recycling program with the American
25 Wireless and the Wireless Alliance.

1 Levering resources is the underlying objective of
2 most nonprofits interested in the development of
3 public-private partnerships. This is a key mechanism for
4 the delivery of our programs. KCB, for example, has
5 established the Proud Community Program, which presently
6 consists of about 120 city, county, and tribal governments
7 throughout the state. The goal of this program is to
8 develop a statewide network to assist local governments in
9 developing and implementing anti-litter, recycling
10 programs, and to exchange information on each other's
11 experiences.

12 The Proud Community Program is growing rapidly.
13 And KCB is delivering value-added support through
14 quarterly regional workshops.

15 Ken Stuart has participated in the last two of
16 these workshops, using this noteworthy opportunity to try
17 to better inform folks as to the state's efforts in this
18 area.

19 We believe this Proud Community network could be a
20 valuable mechanism to support the Waste Board's objectives
21 of enhancing local and regional capabilities to prevent
22 and reduce illegal dumping. The League of California
23 Cities is represented on our board of directors, and we
24 expect the Regional Council of Rural Counties to join the
25 KCB Board soon.

1 Public outreach activities are also an important
2 part of implementing the programmatic objectives of most
3 nonprofit organizations. Groups like the Sierra Club, the
4 Nature Conservancy, the World Wildlife Federation are well
5 known as a result of their public information, education,
6 and advocacy activities.

7 For the past 15 years, KCB has been aggressively
8 involved in targeted public outreach activities,
9 particularly since young males between the ages of 15 and
10 25 years have been identified as the most likely litter
11 offenders.

12 Our public outreach activities have also focused
13 on building KCB's extensive volunteer network that I
14 referred to earlier. Nonprofit organizations, including
15 Keep California Beautiful, are well positioned to develop
16 and implement a sustained public outreach program for
17 illegal dumping.

18 I would like to stress the word "sustained." In
19 the years that I've been doing this kind of thing, I've
20 repeatedly seen good programs built, run for a year or
21 two, and then allowed to fade away into the woodwork. I
22 believe that an issue like this, you've got to define a
23 carefully developed program. You've got to leverage
24 everybody out there that can help implement it, and then
25 there's got to be a commitment to keep it going.

1 Nonprofit organizations are well positioned to do
2 this, which will make a good advantage -- take good
3 advantage of our prior experience. This would also reduce
4 the burden on limited Waste Board staff. The report of
5 the Illegal Dumping Task Force cited as an issue, that Ken
6 has pointed out, that there is no coordinated public
7 education program on prevention of illegal dumping in the
8 state or at the local level.

9 It seems clear that a successful statewide
10 initiative in this area must include a carefully thought
11 out, well coordinated public effort in the three areas
12 that have already been identified, and particularly of
13 targeting the dumpers themselves, in my view.

14 I believe that a nonprofit organization such as
15 KCB could perform a function for the state by developing
16 and implementing a cost effective program that takes full
17 advantage of existing networks and leverage offered
18 through public-private partnership.

19 KCB and its partners, its statewide network of
20 volunteers, is prepared to take up the challenge of
21 illegal dumping as a logical extension of our mission
22 against litter.

23 The key point that we've tried to make here is,
24 there's a great deal of advantage to be had through
25 properly organized public-private partnership and take

1 full of advantage of existing networks.

2 Thank you.

3 CHAIRPERSON MULÉ: Thank you, Paul. Appreciate
4 your being here today.

5 Do you have any closing statements.

6 MR. STUART: Yeah, I just had one quick comment to
7 make.

8 Since I'm a contractor, I don't have to worry
9 about performance evaluations too much. But I did want to
10 thank Howard Levenson for getting -- originally listening
11 to local government and getting this started. Ted and
12 Bill have come on board and have kept us elevated at a
13 very high level. And I'm really encouraged with it. And
14 then finally, we have two young ladies on the far side.
15 Wendy Breckon and Heather Hunt have been a tremendous help
16 to me and the committee or the task force with some of the
17 legal issues and just people to talk with.

18 So from our behalf in the task force, thanks to
19 them.

20 CHAIRPERSON MULÉ: Thank you very much.

21 Any other -- does any of the committee members
22 have any questions or comments? Board Member Peace?

23 MEMBER PEACE: I just have a question.

24 On page 2, it says, "Several of the sites may
25 exceed the Farm and Ranch Grant Program limits, and the

1 LEA has requested that the Board consider a waiver of cost
2 recovery on private property."

3 Can't we do that already? I thought we could do
4 that already with cost recovery under the Farm and Ranch
5 Program.

6 DIVISION CHIEF ORR: This is Bill Or.

7 In terms -- for sites that are covered by the Farm
8 and Ranch Program, like we were discussing before, private
9 property owners are subject to a waiver of cost recovery
10 by the statute. But what that's referring to is for sites
11 that are part of the property -- part of Imperial County
12 area but are not eligible for Farm and Ranch dollars or
13 for those that would exceed the dollar limits under the
14 Farm and Ranch Program. So that would get into some of
15 the waiver of cost recovery issues that we're discussing
16 this morning.

17 MEMBER PEACE: I was really interested to hear
18 everyone talking. This is a big problem. And like
19 Birgitta -- I'm sorry if I mispronounce your name -- had
20 said that one size doesn't fit all. Everybody has to do
21 something, you know, different according to whether they
22 are rural or urban or whatever.

23 And Bill from Butte County, sounded like you have
24 outlined your problems and you have some great programs to
25 put in place. I just wanted to share with you that the

1 City of Chula Vista, down in Southern California, kind of
2 in my neck of the woods, what they have done is they have
3 an exclusive franchise hauler. And as part of their
4 exclusive franchise, every person in the city has to have
5 trash service. You can't say, "Oh, I can take it to work
6 and dump it or take it to my office." No. Everybody has
7 to have it.

8 And along with that, you get large -- any free
9 large pickup. All you have to do is call the hauler and
10 say, "I have a couch," or "I have a refrigerator," and
11 they come and get it. That's the end of it. And they
12 also, along with that, get a free pass to the dump. So
13 what they tell me down there is they virtually don't have
14 an illegal dumping problem down there. So I just thought
15 I would share that with you. Maybe you can share that
16 with some of the other cities or jurisdictions.

17 MR. STUART: It will be shared. It's a very
18 accurate statement. One of the initial -- when I came out
19 of Contra Costa, one of the things, we had mandatory
20 collections throughout the county and I said, "Man, we
21 need that statewide."

22 There are counties and cities when you talk to
23 them about that, it's like, you get out of here. That is
24 such a local issue. And yet, there's some that finally
25 realize that if we're going to solve this, we do have to

1 go to it. So we didn't recommend it as a statewide
2 initiative, but it is recommended and is one that I talk
3 very clearly with it. There are also ones within the
4 franchise agreements that they are expected to pick up the
5 illegal dumping in their service areas so Public Works
6 doesn't have to do it. It all depends on how you want to
7 do it, and but it does take some initiative.

8 Tuolumne County is one that has no mandatory
9 collection, no franchise haulers, tremendous problems.
10 They have met with Bill and they are now looking at
11 adopting the Butte County ordinances and making mandatory
12 collection for tenants, for rental properties. Well,
13 that's a big step ahead and yet they don't lose the
14 election over it either.

15 CHAIRPERSON MULE: That was a huge issue in
16 Riverside County. When I first got to Riverside County,
17 the board of supes were absolutely not -- we're not going
18 to mandate collection. And the tide seems to have turned
19 where they are now considering it in at least portions of
20 the county. So it's a very -- it's a good tool, and as
21 you have explained, it's been very effective.

22 So any other comments or questions?

23 I just want to thank you, Ken, for all of your
24 work on this. You and I have had a lot of discussions on
25 this. You know this is an issue very near and dear to my

1 heart. It is a growing issue in the state and we really
2 do need to address it. And we've talked a lot about what
3 role, if any, should the state play in combatting illegal
4 dumping. I think we do have a role. So I really
5 appreciate the participation of all the task force members
6 in helping us shape what our role is and what it will be
7 in the future. And I think you've done a great job. I
8 think these recommendations are really good.

9 You know, where do we begin, though? That's the
10 \$64,000 question, you know. Of which of these, how do we
11 prioritize these? But we are going to leave that up to
12 you all as the task force to help us figure that out.

13 But really, I do appreciate all the work done on
14 this. Thank you, Ken. I know you worked really hard on
15 this for the last, what, year and a half or so. It's been
16 awhile.

17 PROGRAM DIRECTOR RAUH: If I could just add one
18 quick postscript here.

19 We had come before several months ago with a
20 contract proposal, and you basically gave direction. I
21 wanted to acknowledge the fact that through the direction
22 of the committee, and going back and working with the task
23 force, we found a way to, I think, deliver even a higher
24 level of service and information to the state as a whole
25 on this issue, through a Web-based program. And so it

1 really is -- as a result of the Board's direction, I think
2 we're moving forward in a better direction.

3 CHAIRPERSON MULÉ: Right. I am very pleased with
4 the direction here today as opposed to what you brought to
5 us a few months ago. So thank you.

6 I just also want to make a note here. Mr. Mike
7 Mojaher, who had to leave for a flight, wanted to
8 communicate to the Board and to staff that he supports
9 staff's recommendation and he will follow up with us in an
10 e-mail.

11 MR. STUART: Just a comment on that. Mike is one
12 that got ahold of me and made accessible both the Southern
13 California Waste Haulers Association. And he also spoke
14 at Southern California Council of Governments on this
15 issue. So he's done a lot for us already.

16 CHAIRPERSON MULÉ: Good. That's great.

17 Any other questions or comments?

18 MEMBER PEACE: I just want to say one thing. One
19 of these last things that you are proposing under the
20 regulatory and statutory thing, it says, "The areas that
21 may require additional statutory authority," and the first
22 one is identifying the Board as a lead agency for
23 coordinating the illegal dumping prevention and
24 the development. Can't we just name ourselves? Can't we
25 just do it? I don't think anybody else wants -- nobody

1 else wants to do it. I can't think of anybody.

2 CHIEF COUNSEL BLOCK: Maybe I can add a little bit
3 to that. But I think the idea was to actually formalize
4 our role in statute. We can certainly take a lead without
5 that in the statute, but to the extent that we're looking
6 for some statutory authority behind the steps we want to
7 take, I think that's what that's alluding to.

8 MEMBER PEACE: Was that one of our proposals to
9 put over to the legislature to give us that statutory
10 authority?

11 CHIEF COUNSEL BLOCK: I'm not sure about that at
12 this point.

13 CHAIRPERSON MULÉ: Any other questions or
14 comments?

15 Okay. With that, this meeting is adjourned.

16 Thank you.

17 (The California Integrated Waste Management
18 Board, Permitting & Compliance, meeting
19 adjourned at 4:22 p.m.)

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CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand
Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that
the foregoing California Integrated Waste Management
Board, Permitting & Compliance Committee meeting, was
reported in shorthand by me, Kathryn S. Swank, a Certified
Shorthand Reporter of the State of California, and
thereafter transcribed into typewriting.

I further certify that I am not of counsel or
attorney for any of the parties to said meeting nor in any
way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand
this 16th day of December, 2007.

KATHRYN S. SWANK, CSR
Certified Shorthand Reporter
License No. 13061